(17,306.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 218.

GEORGE H. EARLE, JR., RECEIVER OF THE CHESTNUT STREET NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA, AT THE SUGGESTION AND TO THE USE OF THE COMMONWEALTH TITLE, INSURANCE AND TRUST COMPANY, TRUSTEE FOR MARY RODGERS UNDER THE WILL OF BENJAMIN MILNES, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 17, 1899.

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1 To the honorable the Supreme Court of the United States:

The petition of George H. Earle, Jr., as receiver of the Chestnut Street National Bank, respectfully showeth that your petitioner brought an action into the supreme court of Pennsylvania for the eastern district of Pennsylvania to January term, 1898, No. 222, by writ of certiorari to an appeal from a judgment of the court of common pleas of Philadelphia county, No. 4, of June term, 1897, No. 604, in which action in said supreme court your petitioner was appellant and defendant (garnishee) in the said court of common pleas and The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title, Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, was appellee in said supreme court and plaintiff in said court of common pleas.

That the said action in the said court of common pleas was one in which said plaintiff in said court of common pleas sued one James Long upon a bond in assumpsit, and in which, on September 29, 1897, a judgment was entered against said James Long and damages assessed at $31,499; that said plaintiff in said court of common pleas afterward caused to be issued by said court of common pleas and returnable to it a writ of attachment surjudgment, and on October 5, 1897, an alias writ of attachment surjudgment issued, which alias writ was served upon said The Chestnut Street National Bank of Philadelphia (a banking association incorporated, organized, and transacting business under the act of Congress known as the "national bank act" and laws of the United States) at 11.35 a. m. on October 28, 1897, as garnishee, commanding the said The Chestnut Street National Bank to be and appear before said court of common pleas, at Philadelphia, on the first Monday of November, 1897, to show, if anything it, the said garnishee, have to say, why the said judgment against said James Long, besides costs of suit, should not be levied of the effects of the said defendant in the hands of the said garnishee; that afterward, on November 6, 1897, special interrogatories were filed by the plaintiff in said court of common pleas in the attachment proceedings against said The Chestnut Street National Bank, and a rule was entered by said plaintiff requiring the said The Chestnut Street National Bank, garnishee, "to answer same within twenty days or judgment *sec. reg.*;" that afterward, on

2 November 24, 1897, the said The Chestnut Street National Bank did file its written answer in said proceedings in attachment as garnishee; that afterward, on December 15, 1897, a rule was entered by said plaintiff in said court of common pleas for judgment against the said The Chestnut Street National Bank, garnishee, on its answer, that afterward, on December 23, 1897, the said The Chestnut Street National Bank suspended payment of its obligations, and by order of the Comptroller of the Currency of the United States closed its doors for business; that afterward, on January 29, 1898, said George H. Earle, Jr., was duly appointed by the Comptroller of the Currency of the United States as receiver of said bank, and duly

qualified as such; that afterward, on May 5, 1898, said George H. Earle, Jr., as receiver of said The Chestnut Street National Bank, garnishee aforesaid, entered his appearance in said action in said court of common pleas, and on the same day filed a suggestion of record, setting forth that he had been duly appointed by said Comptroller of the Currency receiver of said bank and had duly qualified as such, and on the following day, May 6, 1898, said George H. Earle, Jr., filed in such action in said court of common pleas an affidavit setting forth the fact of his appointment as receiver, as aforesaid; that afterward, on May 7, 1898, a motion was made and filed (entered as a rule) by said receiver to vacate and dismiss the attachment served upon and against the said The Chestnut Street National Bank, garnishee, for want of jurisdiction of the said court of common pleas under section 5242 of the Revised Statutes of the United States, maintaining that all the proceedings in attachment had in said action in said court of common pleas against said The Chestnut Street National Bank were and are null and void.

That the said court of common pleas of Philadelphia county heard argument on the rule entered December 15, 1898, by plaintiff for judgment against the said The Chestnut Street National Bank, and upon the motion of the said George H. Earle, Jr., its receiver (taken by the court as a rule), filed May 7, 1898, to vacate and dismiss the attachment for want of jurisdiction, as aforesaid, and rendered judgment agaist your petitioner on May 21, 1898, and on the same day an opinion in writing by Honorable Michael Arnold, president judge of said court of common pleas, No. 4, of Philadelphia, was filed, and that by said judgment of said common pleas court the rule for judgment on the answer of said The Chestnut Street National Bank, garnishee, entered by said plaintiff was made absolute and judgment entered accordingly on May 21, 1898, by which said judgment
3 said George H. Earle, Jr., as receiver of said The Chestnut Street National Bank, was ordered to pay the sum of $2,900 to said plaintiff (being the amount of a clearing-house due bill, payable to the order of said James Long, issued by said bank and outstanding at the time of the service of the writ of attachment, and which said clearing-house due bill was duly paid by said bank, but after service of said attachment), and plaintiff was also given leave to issue and did issue a writ of *fieri facias* for the sale of certain securities in the hands of said George H. Earle, Jr., as receiver of said The Chestnut Street National Bank, and to which he held title and ownership and which were collateral to a certain demand note owned and held by said receiver, made by said James Long; and your petitioner says that by said judgment the motion or rule entered by said George H. Earle, Jr., as receiver of said The Chestnut Street National Bank, to vacate and dismiss the proceedings in attachment against said bank and himself in said action for want of jurisdiction of said common pleas court under section 5242 of the Revised Statutes of the United States was discharged, and that said judgment discharging said rule was against the title, right, privilege, exemption, and exception specially set up and claimed under such statute of the United States by your petitioner, to his great damage.

That on the 30th day of January, 1899, the supreme court of Pennsylvania, sitting at Philadelphia, ordered said judgment of the court of common pleas aforesaid to be affirmed, and afterward, on the 30th day of January, 1899, the said judgment was duly entered and recorded in the eastern district of Pennsylvania aforesaid upon the records of said supreme court.

That the said judgment of the supreme court of Pennsylvania is a judgment of the highest court of record of the State of Pennsylvania.

That the judgment of the said supreme court of Pennsylvania is final.

That the right, title, privilege, immunity, exemption, and exception claimed by your petitioner, defendant and garnishee and appellant aforesaid, was claimed upon his own behalf and for his own benefit as such receiver under section 5242 of the Revised Statutes of the United States, in force at the time the writ of attachment complained of was issued against said The Chestnut Street National Bank by the court of common pleas of Philadelphia county, and the judgment of which court against your petitioner in this regard has
4 been affirmed by said supreme court of Pennsylvania, as aforesaid. The said section 5242 of the Revised Statutes of the United States is in words as follows:

"SEC. 5242. All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void. No attachment, injunction, or execution shall be issued against such association or its property before final judgment in any suit, action, or proceeding in any State, county, or municipal court."

That the decision and judgment of the supreme court of Pennsylvania aforesaid was against the right, title, privilege, immunity, exemption, and exception so claimed by and for the benefit and use of your petitioner.

That the said court of common pleas of Philadelphia and the supreme court of Pennsylvania have and had no jurisdiction over the subject-matter or controversy, but that the jurisdiction is by the said statute laws of the United States (section 5242, Revised Statutes) wholly forbidden and prohibited, and therefore the said proceedings in attachment and judgment aforesaid are null and void and contrary to the statute laws of the United States in the premises.

Your petitioner therefore prays for the allowance of a writ of error to the supreme court of Pennsylvania in order that the said judgment of the supreme court of Pennsylvania may be re-

examined and reversed or affirmed in the Supreme Court of the United States.

And he will ever pray.

GEORGE H. EARLE, JR.,
As Receiver of the Chestnut Street National Bank.

5 STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

George H. Earle, Jr., being duly affirmed according to law, declares and says that he was appointed receiver of the said The Chestnut Street national bank on or about January 29, 1898, by the Comptroller of the Currency of the United States, and that the facts in the above petition stated are true to the best of his knowledge, information, and belief.

GEORGE H. EARLE, JR.

Affirmed and subscribed before me this sixth day of February, A. D. 1899.

[Seal of Wm. H. G. Gould, Notary Public, Philadelphia, Pa.]

WM. H. G. GOULD,
Notary Public.

I will accept service of citation to the Supreme Court of the U. S. in above case.

ALFRED D. WILER,
Att'y for Commonwealth T., I. & T. Co., Use Pl'ffs.

2, 6, '99.

6 [Endorsed:] In the Supreme Court of the United States. George H. Earle, Jr., as receiver of the Chestnut Street national bank, petitioner in error, *vs.* The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title, Insurance & Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased. Petition for writ of error. And now, to wit, this 8th day of February, 1899, citation awarded and writ of error allowed by me, George Shiras, Jr., associate justice of the Supreme Court of the United States. Asa W. Waters, W. H. Addicks, attorneys for petitioner.

7 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit

between George H. Earle, Jr., receiver of the Chestnut Street national bank, appellant, and The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title, Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, appellee, No. 222, January term, 1898, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was
8 in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 8th day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
GEORGE SHIRAS, Jr.,
Associate Justice of the Supreme Court of the United States.

9 *Copy of Citation.*

UNITED STATES OF AMERICA, *ss:*

To the Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title, Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's

office of the supreme court of the State of Pennsylvania, wherein George H. Earle, Jr., receiver of the Chestnut Street national bank, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States, this 8th day of February, in the year of our Lord one thousand eight hundred and ninety-nin

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

Service of above citation, on February 9, 1899, is admitted and accepted.

ALFRED D. WILER,
Att'y for Commonwealth of Pennsylvania, to Use, &c.

10 *Bond Surwrit of Error to the Supreme Court of the United States.*

In the Supreme Court of Pennsylvania in and for the Eastern District of Pennsylvania.

THE COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title, Insurance and Trust Company, Trustees for Mary Rodgers under the Will of Benjamin Milnes, Deceased, Appellee, *vs.* (JAMES LONG, Defendant, and) GEORGE H. Earle, Jr., as Receiver of the Chestnut Street National Bank, Garnishee, Appellant.	No. 222, January Term, 1898.

Know all men by these presents that we, George H. Earle, Jr., as receiver of the Chestnut Street national bank, and the Finance Company of Pennsylvania, are held and firmly bound unto the Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, in the full and just sum of seventy-five hundred dollars ($7,500), to be paid to the said The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, its certain attorney or attorneys or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

11 Sealed with our seals and dated this eighth day of February, 1899.

Whereas lately, at a term of the supreme court of Pennsylvania in and for the eastern district of Pennsylvania, in a suit depending

on said court between George H. Earle, Jr., as receiver of the Chestnut Street national bank, appellant, and The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, appellee, judgment was rendered against the said George H. Earle, Jr., as receiver of the Chestnut Street national bank, and the said appellant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustees for Mary Rodgers under the will of Benjamin Milnes, deceased, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said George H. Earle, Jr., as receiver of the Chestnut Street
12 national bank, appellant in said Supreme Court of the United States, shall prosecute his writ of error to effect and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

GEORGE H. EARLE, JR.,
As Receiver of the Chestnut Street National Bank. [SEAL.]
THE FINANCE CO. OF PENNSYLVANIA,
By C. WILLIAM FUNK, *Sec'y.* [SEAL.]

Sealed and delivered in the presence of—
SIMON A. STERN.

I approve of the above bond on behalf of the Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased.

ALFRED D. WILER,
Att'y for Commonwealth Title Ins. & T. Co., Trustees, Use Plaintiffs.

2, 6, '98.

The above bond approved this 8th day of February, 1899.
GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Ct. of the U. S.

Endorsement: 222, January term, 1898. Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, *vs.* James Long,
13 defendant, and The Chestnut Street National Bank, garnishee, and George H. Earle, Jr., receiver of Chestnut Street national

bank. Appeal of Chestnut Street National Bank, garnishee, and George H. Earle, Jr., receiver of the Chestnut Street national bank. Filed Feb. 9, 1899, in supreme court of Penna., E. D. Bond sur-appeal to the Supreme Court of the United States.

I hereby certify that the above is a true and correct copy of the bond filed in above-entitled case.

In testimony whereof I have hereunto set my hand and the seal of said court, at Philadelphia, this 9th day of February, A. D. 1899.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

14 In the Supreme Court of Pennsylvania, Eastern District.

Among the records and proceedings of the supreme court of Pennsylvania in and for the eastern district, *inter alia*, the following may be found as matter of file and of record:

Appearance Docket.

No. 222, January Term, 1898.

Docket Entries.

	Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance & Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, plaintiff,	Appeal from the court of common pleas, No. 4, of the county of Philadelphia.
		Filed June 4, 1898.
222.	*v.*	*Eo die*, certiorari exit, ret'ble the first Monday of January, 1899.
Asa W. Waters. W. H. Addicks.	James Long, defendant, and The Chestnut Street National Bank, garnishee, and George H. Earle, Jr., receiver of the Chestnut Street National Bank (appellants), defendants.	June 28, 1898, record returned and filed. January 2, 1899, assignments of error filed. January 17, 1899, argued. January 30, 1899, judgment affirmed *per curiam* (S.).
	Appeal of the garnishee and of the receiver.	February 9, 1899, petition and copy of petition for writ of error to the Supreme Court of the U. S. brought into office.
	C. P., No. 604, June T., 1897.	*Eo die*, writ of error, with copy of same, brought into office. *Eo die*, citation, with service, admitted and accepted by Alfred D. Wiler, Esq., att'y for Commonwealth of Penna., brought into office. *Eo die*, bond in $7,500 filed.

15 *Certificate.*

I hereby certify that the above and foregoing is a true and correct copy of the docket entries in the above-entitled case so full and entire as appears of record in our said supreme court.

In testimony whereof I have hereunto set my hand and seal of said court, at Philadelphia, this 8th day of February, A. D. 1899.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

Appeal and Affidavit.

In the Supreme Court of Pennsylvania for the Eastern District.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased, Plaintiff, *vs.* JAMES LONG, Defendant, and THE Chestnut Street National Bank, Garnishee, and George H. Earle, Jr., Receiver of the Chestnut Street National Bank (Appellants), Defendants.	Court of Common Pleas, No. 4, of the County of Philadelphia, June Term, 1897. No. 604.

Enter appeal on behalf of the Chestnut Street National Bank, garnishee, and George H. Earle, Jr., receiver of Chestnut Street national bank, for judgment against the Chestnut Street National Bank, garnishee, of the court of common pleas, No. 4, of the county of Philadelphia.

ASA W. WATERS,
W. H. ADDICKS,
Att'ys for Appellants.

16 To Charles S. Greene, proth'y sup. ct., E. D.

COUNTY OF PHILADELPHIA, *ss:*

George H. Earle, Jr., receiver as aforesaid, being duly affirmed, saith that said appeal is not taken for the purpose of delay, but because appellants believe they have suffered injustice by the judgment against the Chestnut Street National Bank, garnishee, from which they appeal.

GEORGE H. EARLE, JR.

Affirmed and subscribed this 3rd day June, A. D. 1898.

H. F. REARDON,
[SEAL.] *Notary Public.*

Endorsement: No. 222, January term, 1898, supreme court of Pennsylvania, eastern district. Com'th *ex rel.* Com'th Title Ins. Co., trustee, etc., *v.* James Long *et al.*; Chestnut Street National Bank, etc., *et al.*, appellants. Appeal and affidavit. Filed Jun- 4, 1898, in supreme court. Asa W. Waters, W. H. Addicks.

Præcipe for Certiorari.

In the Supreme Court of Pennsylvania for the Eastern District.

The CHESTNUT STREET NATIONAL BANK, Garnishee, and GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Appellants.

Certiorari to the court of common pleas, No. 4, of the county of Philadelphia, of June term, 1897. No. 604.

17 Issue certiorari to the court of common pleas, No. 4, of the county of Philadelphia to bring up record and proceedings in a certain action in said court, No. 4, June term, 1897, wherein Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benj. Milnes, dec'd, plaintiff, and James Long and The Chestnut Street National Bank, garnishee, and George H. Earle, Jr., receiver of said Chestnut Street national bank, defendant-.

Returnable to next term, *sec. reg.*

ASA W. WATERS,
W. H. ADDICKS,
Attorneys for Appellants.

To Charles S. Greene, proth'y sup. court, E. D.

Endorsement: No. 222, January term, 1898, supreme court of Pennsylvania, eastern district. Com'th *ex rel.* Com'th Title Ins. Co., trustee, etc., *vs.* James Long *et al.*; Chestnut Street Nat'l Bank, etc., *et al.*, appellants. Præcipe for certiorari. Asa W. Waters, W. H. Addicks.

Exemplification.

PHILADELPHIA COUNTY, } *sct:*
State of Pennsylvania, }

Among the records and proceedings of the court of common pleas, No. four, for the county of Philadelphia, State of
18 Pennsylvania, the following may be found as matter of file and of record at No. 604, June term, 1897, to wit:

Docket Entries.

June Term, 1897.

Wiler & Crawford.
Loughlin & Dallas.

604.

The Commonwealth of Penna., at the suggestion and to the use of the Commonwealth Title Ins. & Trust Co., trustee for Mary Rodgers under the will of Benjamin Milnes, dec'd,
vs.
James Long.

Sums. assumpsit exit July 24, 1897.
Ret. 1 Mon., Aug., 1897.
Served.

Frank W. Paul, for Huntg. & Broad Top Mt. R. & Coal Co., garn.
Oct. 1, '97.

July 24, 1897, statement of claim filed.

Sept. 1, 1897, rule for judg't for want of a suff. aff't of defence.

Morgan & Lewis, for Girard Nat. Bank, gar.
Sept. 30, '97.

July 29, 1897, aff't of service of copy of statement on July 26, '97, filed.

Sept. 27, 1897, rule absolute.

R. C. Dale, for 4th St. Nat. Bk., garn.
Sept. 30, '97.

Aug. 5, 1897, suggestion of defence filed.

Sept. 29, 1897, dams. ass'd, $31,499.00.

John Roberts, for 8th Nat. Bank, gar.
Sept. 30, '97.

Sept. 29, 1897, att. surjudg't *vs.* Union Trust Company, Merchants' National Bank, Girard National Bank, Eighth National Bank, Fourth Street National Bank, Huntingdon & Broad Top Railroad, Niagara Mining & Smelting Co., James Long, Bro. & Co., M. Simpson Mc Cullough, garnishees, exit.

Sept. 29, 1897, *fi. fa.* exit.

Metzger, for Union Trust Co., garn.
Oct. 1, '97.

Ret. 1 Mon., Oct., 1897.

Ret. 1 Monday, Oct., 1897, *nulla bona.*

Henry T. Dechert, for Merchants' Nat. Bk., gar.
Oct. 1, '97.

Attached as commanded and made known to gars. as follows: Girard Nat. Bank, Fourth St. Nat. Bk., 8th Nat. Bk, Jas. Long, Bro. & Co., Huntingdon & Broad Top Mt. R. R. & Coal Co., & Niagara & Smelting Co., & *nihil habet* as — M. Simpson McCullough, garn., & James Long, def't.

Oct. 27, 1897, rule for judgment against 8th Nat. Bank, garnishees, for the amount admitted to be due.

19 Bispham, for M. S. McCullough, gar.
Oct. 8, '97.

Oct. 5, 1897, att. surjudg't *vs.* M. Simpson McCullough, garnishee, exit.

Oct. 30, 1897, rule withdrawn.

J. H. Taulane, for Olive Long.
Dec. 27, '97.

Ret. 1 Mon., Nov., 1897.

Dec. 15, 1897, rule for judg't against Chest. St. Nat. Bank, garnishees, on answers filed.

Addicks & Waters, for receivers of Chest. St. Nat. Bk., gar.
May 5, '98.

Att. as commanded and made known to garn., & *nihil habet* as to def't.

Oct. 19, 1897, special interrogatories & rule to answer on the following garnishees, viz:

May 21, 1898, rule absolute—see findings—filed.

Eo die, opinion by Arnold, P. J., filed.

May 5, 1898, suggestion of record that Geo. H. Earle, Jr., Esq., has been duly appointed by the Comptroller of the Currency as receiver for the Chestnut St. Nat. Bank of Phila., garn., filed.

May 7, 1898, motion to vacate and dismiss attachment filed.

May 21, 1898, motion to vacate and dismiss attachment discharged.

May 24, 1898, findings ag'st Chestnut St. Nat. Bk. filed.

May 27, 1898, *fi. fa. vs.* defendant to sell right, title, and interest in 77 shares National Gas Trust stock and 33 shares capital stock of Eighth national bank, subject to claim of Chestnut Street National Bank, garnishee, of $17,831 and interest thereon, exit.

Ret. 1 Monday, June, 1898.

Huntingdon & Broad Top Mountain R. R. & Coal Co., Merchants' National Bank, The Union Trust Co., 8th National Bank, Girard National Bank, 4th Street National Bank, filed.

Oct. 21, 1897, answer of Union Trust Co., gar., filed.

Oct. 22, 1897, answer of Merchants' Nat. Bank, gar., filed.

Oct. 22, 1897, answer of Fourth St. Nat. Bank, gar., filed.

Oct. 25, 1897, answer of 8th National Bank, gar., filed.

Oct. 28, 1898, supplemental answer of 8th Nat. Bank, gar., to 7th interrogatory filed.

Nov. 6, 1897, separate answers of Girard National Bank & Huntingdon & Broad Top R. R. and Coal Co., gars., filed.

20 Nov. 6, 1897, interrogatories and rule to answer to Chestnut St. Nat. Bank, gar., filed.

Nov. 24, 1897, answers of Chestnut St. Nat. Bank, garn., filed.

May 6, 1898, aff't of George H. Earle, Jr., filed.

June 4, 1898, certiorari from S. C. of Jan'y term, 1898.

No. 22, surappeal of the Chestnut St. National Bank bro't into office.

Eo die, appeal bond filed.

Jan. 31, 1898, answer of James Long filed.

Bill of discovery in aid of execution filed Dec. 7, 1897.

Dec. 7, 1897, *sci. fa.* allowed.

Exit, ret. 1 Mon., Jan'y, 1898, made known.

[SEAL.]

Certified from the record this 22nd day of June, A. D. 1898.

JOHN L. BURNS,
Pro Prothonotary.

THE COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustees for Mary Rodgers under the Will of Benjamin Milnes, Deceased,
21 *vs.*
JAMES LONG.

Common Pleas, No. —, June Term, 1897. No. —.

Issue summons in assumpsit ret. *sec. reg.*

ALFRED D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Att'y- for Pl'ff.

7, 24, '97.

To proth'y of common pleas.

Endorsement: 604, C. P., No. 4, June term, 1897. 304. Commonwealth of Pennsylvania, at suggestion and to the use of the Commonwealth Title Ins., &c., Co. *v.* James Long. Præcipe. Summons assumpsit. Filed Jul- 24, 1897. Hunter, prothonotary. A. D. Wiler, Crawford, Loughlin & Dallas.

Summons.

COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, Greeting:

We command you that you summon James Long, late of your county, so that he be and appear before our judges at our court of common pleas, No. 4, of the county of Philadelphia, to be holden at Philadelphia, in and for said county, on the first Monday of August next, there to answer Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, of a plea of assumpsit; and *to* have you then and there this writ.

22 Witness the Honorable Michael Arnold, president judge of our said court, at Philadelphia, the 24th day of July, in the year of our Lord one thousand eight hundred and ninety-seven (1897).

J. U. G. HUNTER,
Pro Prothonotary.

Endorsement: 604, June term, 1897, court of common pleas, No. 4. Commonwealth of Pennsylvania, at the suggestion of and to the use of Commonwealth Title Insurance and Trust Company, trustee, &c., *vs.* James Long. Summon assumpsit. Alfred D. Wiler, Crawford, Loughlin & Dallas.

Endorsement.

Served James Long by giving to him July 26, 1897, a true and attested copy of the within writ and making known to him the contents thereof.

So answers—

JOHN J. CURLEY, *Deputy Sheriff.*
ALEXANDER CROW, JR., *Sheriff.*

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased, *vs.* JAMES LONG.	C. P., No. 4, June Term, 1897. No. 604.

Plaintiff's Statement of Claim.

The Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, claim to recover from James Long, the defendant, the sum of

$30,148.18, together with lawful interest thereon, which is
23 justly due and owing by the said defendant to plaintiff as follows:

1. Benjamin Milnes died on April 11, 1861, having first made his last will and testament, dated February 9, 1861, and duly probated June 5, 1861, and registered in Will Book No. 46, page 12, &c., whereby he gave to William Milnes, in trust for his daughter, Mary Rodgers, the sum of twenty-five thousand dollars. In addition he also gave him, in trust for said Mary Rodgers after the death of his wife, Mary Milnes (who died May 3, 1880), one-third of twenty-five thousand dollars; also one-third of the proceed- of sale of house on Callowhill street east of Twelfth. A full copy of said will, showing the same, is attached hereto, marked Exhibit A.

2. That on the seventh day of September, A. D. 1895, John Milnes was by the orphans' court of Philadelphia county appointed trustee for said Mary Rodgers in place of William Milnes, deceased, and entered security in the sum of thirty-seven thousand dollars, the said defendant, James Long, being one of said sureties. A copy of the bond entered by him and on which this suit is brought is as follows:

Estate of MARY RODGERS under Will of Benjamin Milnes, Deceased.

Know all men by these presents that we, John Milnes, trustee of said estate; James Long, and Marcius S. Bulkley, are held and firmly bound unto *to* the Commonwealth of Pennsylvania in the
24 sum of thirty-seven thousand dollars, lawful money, to be paid said Commonwealth of Pennsylvania, their certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the 14th day of September, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas at an orphans' court for the county of Philadelphia, held the seventh day of September, in the year of our Lord one thousand eight hundred and seventy-five, surpetition, the court appointed the said John Milnes trustee of said estate in place of William Milnes, deceased, upon security being entered in the sum of $37,000:

Now, the condition of this obligation is such that if the above-bounden John Milnes shall faithfully perform his duties as such trustee and shall truly account for and faithfully appropriate the proceeds of the same agreeably to the provisions of the act of assembly in such case made and provided and according to the uses and trusts contained in the will of said decedent, then the said obligation to be void, or otherwise to be and remain in full force and virtue.

JOHN MILNES. [SEAL.]
JAMES LONG. [SEAL.]
M. S. BULKLEY. [SEAL.]

Sealed and delivered in the presence of—
WM. F. JOHNSON.
A. J. FORTIN.

3. That by virtue of his appointment as trustee said John Milnes received the sum of thirty-five thousand one hundred and four dollars and sixty-eight cents to hold as trustee for said Mary Rodgers under the terms of said will.

4. That said John Milnes departed this life on the twenty-eighth day of February, 1897, and on the twenty-third day of March, 1897, The Commonwealth Title Insurance and Trust Company (plaintiff herein) was by the orphans' court of Philadelphia county duly appointed trustee in place of said John Milnes, deceased, and duly entered security in sum of seventy thousand dollars.

5. The said John Milnes did not faithfully perform the duties of said trust, but, on the contrary, appropriated nearly all of said trust funds to his own use, to wit, the sum of thirty thousand one hundred and forty-eight dollars and eighteen cents ($30,148.18).

6. That the Equitable Trust Company was duly appointed administrator of the estate of said John Milnes, and as such filed his account as trustee, as aforesaid, in the orphans' court of Philadelphia county (April term, 1886, No. 433), and which was duly adjudicated by said court, the adjudication being filed June 30, 1897, and confirmed finally on July 17, 1897, said adjudication being as follows:

"Estate of BENJAMIN MILNES. April Term, 1886. No. 433.

Suraccount of John Milnes, trustee for Mary Rodgers under will of said testator, as stated by the Equitable Trust Company, administrator of John Milnes, deceased.

1897, June 28.—And now, the above account having been called for audit, Alfred D. Wiler and George L. Crawford, Esqs., appeared for the accountant; also for the Commonwealth Title Insurance and Trust Company, substituted trustees. The trust in this case arises under the will of Benjamin Milnes, deceased, dated the ninth day of February, 1861, whereby the said John Milnes received in trust for his sister, Mary Rodgers, a legacy of twenty-five thousand dollars, and after death of Mary Milnes, widow of testator, a further sum of ten thousand one hundred and four dollars and sixty-eight cents, to be held in trust for the said Mary Rodgers to pay her the income thereof during her life. It appeared from the evidence submitted to the auditing judge that there had been a devistavit of this estate; that there only came into the hands of this present accountant a bond and mortgage for the sum of five thousand dollars, given and executed by William A. Tyce to John Milnes, trustee, dated Sept., 1893; that all the rest of the principal of the trust estate, amounting to thirty thousand one hundred and four dollars and sixty-eight cents, had disappeared in the lifetime of John Milnes, as had also the balance of income, as shown by the account, amounting to forty-three dollars and fifty cents, and have never come into the hands of the present accountant.

The bond and mortgage of $5,000 above mentioned is awarded to the Commonwealth Title Insurance and Trust Company, substi-

tuted trustee, and the account is confirmed *nisi* on payment of clerk's costs.

JOS. C. FERGUSON, *J.*"

7. Plaintiff says that said John Milnes died insolvent and left no individual assets whatever.

8. Plaintiff claims to recover from said James Long by virtue of said bond the sum of thirty thousand one hundred and forty-eight dollars and eighteen cents, together with lawful interest thereon, being the amount of moneys of said trust estate appropriated by said John Milnes to his own use and for which defendant is liable.

ALFRED D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

EXHIBIT A.

I, Benjamin Milnes, of the city of Philadelphia, miner and merchant, mindful of the uncertainty of this life, and being
28 weak in body, but of sound mind and memory; thanks be to God for the same, have thought fit and proper to make, and hereby do make and publish this my last will and testament respecting my worldly goods and estate, hereby revoking all wills by me at any time heretofore made.

First. I commend my soul to God who gave it, and my body to the dust to be buried in a Christian-like manner.

Item. I do will order and direct that my funeral expenses and all other my just debts that I may owe if any at the time of my decease, be duly paid and satisfied as soon as conveniently can be after my decease.

Item. I do will devise and bequeath unto my beloved wife Mary Milnes for and during all the term of her natural life in case she should survive me, the house and lot of ground wherein I now reside, situate in the city of Philadelphia on the north side of Callowhill street east of Twelfth street, being numbered eleven hundred and twenty-seven; and from and immediately after the decease of my said wife, I do will devise and bequeath the said house and lot of ground to my three children, viz: William Milnes, Junior, John Milnes and Mary Rodgers (wife of James W. Rodgers, their heirs and assigns in full equal undivided third parts as tenants in common and not as joint tenants so as nevertheless that the one
29 full undivided third part of the proceeds of such one-third part thereof so devised by me to my said daughter Mary Rodgers (wife of said James W. Rodgers) shall be held by William Milnes (one of my executors hereinafter named) his heirs, executors and administrators in trust nevertheless to and for the same or like uses and to and for the only proper use and benefit of my daughter the said Mary Rodgers and her heirs as is hereinafter particularly mentioned and set forth.

Item. I do will order and direct that William Milnes (one of my executors hereinafter named) his heirs executors or administrators

shall set apart and invest the sum of twenty-five thousand dollars in the purchase of stocks, first bonds and mortgages and well secured ground rents in the city of Philadelphia and shall pay the rents interests issues incomes and dividends accruing thereon to my beloved wife Mary Milnes during all the term of her natural life, and from and immediately after her decease then the whole of said sum of twenty-five thousand dollars and all and every the arrears due for rents interest issues incomes and dividends, I do will order and direct to be equally divided between my said children William Milnes Junior, John Milnes and Mary Rodgers (wife of said James W. Rodgers) so as nevertheless that the share of my said daughter Mary Rodgers shall be held by William Milnes (one of my executors hereinafter named) his heirs executors and administrators in trust nevertheless to and for the same or like uses and to and for the only proper use and benefit of my daughter the said Mary Rodgers and her heirs as hereinafter particularly mentioned and set forth.

Item. I do will devise and bequeath to William Milnes (one of my executors hereinafter named) his heirs executors and administrators twenty-five thousand dollars in trust nevertheless to and for the following uses intents and purposes and to and for no other use intent or purpose whatever that it is my will and desire that the said William Milnes his heirs executors and administrators shall hold the same in trust for the only proper use and benefit of my daughter Mary Rodgers wife of James W. Rodgers during all the term of her natural life to pay to her the interest thereof, so that the same shall not be in any way or manner subject to the debts control or interference of her present or any future husband, and from and immediately after the decease of my said daughter Mary Rodgers she leaving a child or children her surviving in trust to pay the interest thereof for the support education and maintenance of such child or children until the youngest arrives to the age of twenty one years, if not of that age at the time of the decease of my said daughter then in trust to pay convey and assign the said principal to and among the child or children of my said daughter and the surviving issue of any child of my said daughter that may be then deceased share and share alike the issue of any such deceased child to take and receive only such part and share himself, herself between or among them as his her or their deceased parent if living would have had and taken and in case of the decease of my said daughter Mary Rodgers without leaving any issue of age or if leaving issue such issue die in their minority then the said Mary Rodgers shall have power to grant and convey said premises unto such person or persons and for such estate and estates as she the said Mary Rodgers by any instrument of writing in the nature of a will under her hand and seal executed in the presence of two or more subscribing witnesses shall direct limit and appoint.

Item. I do will devise and bequeath to my two sons William Milnes Junior and John Milnes their heirs and assigns absolutely share and share alike to hold to them the said William Milnes Junior and John Milnes and their heirs and assigns share and share

alike as tenants in common and not as joint tenants all my right title and interest in the firm of Benjamin Milnes and Company and in the firm of William Milnes Junior and Company, subject nevertheless to the payment of the sum of twenty-five thousand dollars with interest as hereinbefore willed and devised by me to William Milnes (one of my executors hereinafter named) in trust for the use of my said daughter Mary Rodgers and her heirs.

32 Item. I do will devise and bequeath to my said two sons William Milnes Junior, and John Milnes their heirs and assigns share and share alike all the rest residue and remainder of my estate real personal and mixed of whatsoever nature or kind and wheresoever situate to hold to them the said William Milnes Junior and John Milnes their heirs executors administrators and assigns forever share and share alike.

Item. I do hereby authorize and empower my executors or the survivor of them, his her or their executors or administrators at any time or times after my decease to sell and dispose of the whole or any part of my real estate (except my house and lot of ground number eleven hundred and twenty-seven Callowhill street) either at public or private sale for cash or on credit absolutely or reserving ground rent for the best price or prices that can be obtained therefor and to execute and acknowledge the requisite deed or deeds of conveyance for effectually granting and conveying the same to the purchaser or purchasers thereof his her or their heirs and assigns and for the sale assignment or extinguishment of any ground rents due or payable to me, or which may be reserved upon sales by them or either of them and in such manner that the premises conveyed or released shall be in the hands of such purchaser or purchasers free clear and discharged from all trusts whatsoever and so that there shall be no liability on the part of such pur-

33 chaser or purchasers to see to the application or misapplication of the purchase-money. And I do further authorize and empower my executors or the survivor of them or their legal representative to alter and change the investments of my said estate from time to time as they or the survivor of them may think best keeping nevertheless my said estate invested in securities of the same character as hereinbefore mentioned and to take all such measures to make execute acknowledge and deliver all such deeds conveyances assurances and papers for the purpose of fully effecting all the provisions of this my last will and testament as they or the survivor of them may think fit, all such reinvestments as may from time to time be made to be used held and kept for the purposes of this my will.

Lastly I nominate and appoint my beloved wife Mary Milnes and my brother William Milnes to be the executors of this my last will and testament.

In witness whereof, I the said testator Benjamin Milnes have hereunto set my hand and seal this ninth day of February in the year of our Lord one thousand eight hundred and sixty-one (1861).

BENJAMIN MILNES.

Signed, sealed, published, and declared by the said testator, Benjamin Milnes, as and for his last will and testament in the
34 presence of us, who, in his presence and in the presence of each other and at his request, have hereunto subscribed our names as witnesses the day and year aforesaid.

ORLANDO GRAY.
J. C. PAYNTER.
J. R. DEACON.

Edw'd H. Bonsall, being duly affirmed, doth say that he is the 2nd vice-president of the Commonwealth Title Insurance and Trust Company, and that the facts set forth in the foregoing statement of claim are true.

E. H. BONSALL.

Affirmed and subscribed before me this 24th day of July, 1897.

ANDREW T. KAY,
[SEAL.] *Notary Public.*

Endorsement: 604, C. P., No. 4, June term, 1897. Commonwealth of Pennsylvania, at the suggestion and to the use of Commonwealth Title Ins. & T. Co., trustee, &c., *v.* James Long. Plaintiff's statement of claim. Filed Jul- 24, 1897. J. Briggs, pro prothonotary. A. D. Wiler, Crawford, Loughlin & Dallas.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion of and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under Will of Benjamin Milnes, Dec'd, *vs.* JAMES LONG.	C. P., No. 4, June Term, 1897. No. 604.

35 *Suggestion of Defence.*

James Long, the above-named defendant, by the advice of his counsel, suggests that the plaintiff in the above case is not *to* entitled to judgment for want of an affidavit of defence, because the statement of claim filed is defective for the purpose in the following particulars:

1. The statement of claim filed shows that the amount claimed is claimed by the Commonwealth Title Insurance and Trust Company, trustee, as aforesaid, directly and not by or through the Commonwealth of Pennsylvania.

2. Because the act of assembly relating to official bonds requires that the claim shall be made by the Commonwealth of Pennsylvania, and that any liability under the bond in suit would be to the said Commonwealth of Pennsylvania and not to the said trust company, trustee, as stated.

JAS. LONG.

Endorsement: 604, J., '97, C. P., 4. Commonwealth of Penna., to use, &c., *v.* James Long. Suggestion of defence. Filed Aug. 5, 1897. Pennypacker, pro proth'y. White & White.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Co., Trustee, &c., *vs.* JAMES LONG.	Common Pleas. No. 4, June Term, 1897. No. 604.

Enter rule for judgment for want of a sufficient suggestion of defence, retbl. *sec. leg.*

ALFRED D. WILER.
CRAWFORD, LOUGHLIN & DALLAS.

36 Endorsement: C. P., No. 4, 604, June term, 1897. Commonwealth of Pa., &c., *vs.* James Long. Rule for judg't. Filed Sept. 2, 1897. J. M. A. D. Wiler, Crawford, Loughlin & Dallas.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased, *vs.* JAMES LONG.	C. P. No. 4, June Term, 1897. 604.

Assessment of Damages in Favor of the Commonwealth of Pennsylvania.

For penal sum of bond, $37,000.

Assessment of damages in favor of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased.

Amount due as per statement of claim.....	$30,148.18
Interest from Jan. 1, 1897, to Sept. 27, '97.....	1,350.82
	$31,499 00

I assess damages as above.

H. C. PENNYPACKER,
Pro Prothonotary.

Endorsement: C. P., 4, 604, June term, 1897. Commonwealth of Pennsylvania, to the use, &c., *vs.* James Long. Assessment of damages. Filed Sept. 29, 1897. J. Briggs, pro proth'y. Wiler, Crawford, Loughlin & Dallas.

37 COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rogers under the Will of Benjamin Milnes, Deceased,
vs.
JAMES LONG.
C. P., No. 4, June Term, 1897. No. 604.

Issue attachment surjudgment and summon as garnishees Union Trust Company, Merchants' National Bank, Girard National Bank, Eighth National Bank, Fourth Street National Bank, Huntingdon & Broad Top Railroad, Niagara Mining and Smelting Company, James Long Bro. & Co.

ALFRED D. WILER.
CRAWFORD, LOUGHLIN & DALLAS.

Add name of M. Simpson McCullough as garnishee.
Oct. 2, '97.

To proth'y of C. P., No. 4.

Endorsement: C. P., No. 4, 604, June term, 1897. Commonwealth of Pennsylvania, &c., *vs.* James Long. Pr. att. surjudg't. Filed Sep. 29, 1897. Hunter, pro proth'y. Wiler, Crawford, Loughlin & Dallas.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased,
vs.
JAMES LONG.
C. P., No. 4, June Term, 1897. No. 604.

Issue *fi. fa.*, retbl. *sec. reg.*

ALFRED D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Att'y. for Pl'ff.

To proth'y of C. P., No. 4.

38 Endorsement: C. P. No. 4, 604, June term, 1897. Commonwealth of Pennsylvania, &c., *vs.* James Long. Præcipe for *fi. fa.* Filed Sep. 29, 1897. Hunter, pro proth'y. Wiler, Crawford, Loughlin & Dallas.

Attachment Surjudgment.

COUNTY OF PHILADELPHIA, *ss:*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, Greeting:

We command you that you levy upon and attach the goods and chattels, stocks, moneys, and interests of and debts due to James Long, defendant, in satisfaction of certain judgment obtained in our court of common pleas, No. 4, of the county of Philadelphia, at the suit of Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, dec'd, plaintiff, against the said defendant, of June term, 1897, No. 604, for the sum of thirty-one thousand four hundred and ninety-nine dollars, with interest from the 27th day of September, 1897, and costs.

And also that by honest and lawful men of your bailiwick you make known to the said defendant and to Union Trust Company, Merchants' National Bank, Girard National Bank, Eighth National Bank, Fourth Street National Bank, Huntingdon and Broad Top Mountain Railroad & Coal Co., Niagara Mining and Smelting Company, James Long Bro. & Co., and all other persons in whose hands or possession the said goods and chattels, stocks, moneys, interest, and debts or any of them may be attached as garnishees that they be and appear before our said court, at Philadelphia, on the first Monday of October next, to show, if anything they, the said defendant or the said garnishees, have to say, why the said judgment, besides costs of suit, should not be levied of the effects of the said defendant in the hands of the said garnishees; and have you then and there this writ.

39

Witness the Honorable Michael Arnold, president judge of our said court, at Philadelphia, the 29th day of September, in the year of our Lord one thousand eight hundred and ninety-seven (1897).

J. U. G. HUNTER,
Pro Prothonotary.

Endorsement: 604, June term, 1897, court of common pleas, No. 4. Commonwealth of Pennsylvania, &c., *v.* James Long, def't; Union Trust Co., Merchants' National Bank, Girard National Bank, Eighth National Bank, Fourth Street National Bank, Huntingdon & Broad Top Mountain R. R. & Coal Co., Jas. Long Bro. & Co. Att. surjudgment. Real debt, $31,499.00; int. from 9, 27, '97, —; att'y writ, &c., 7.25; proth'y, 3.37; cr. and sat., 25; *fi. fa.*, &c., 1.75; att. surjudgment, 1.25; costs on same, att'y, 6.00; proth'y, 3.62; garn. att'y, 13.00. M. Simpson McCullough. 11 a. m., 10, 2, '97. A. D. Wiler, Crawford, Loughlin & Dallas. (Sheriff's office, 10.20 o'clock, Sept. 29, 1897.)

Endorsement in lead pencil: N. H. as to James Long. 1.45 p. m. Per 9, 29, '97. J. Simpson Africa, Union Trust Co. Per 9,

29, '97, 2.20 p. m. F. W. Ayer, pres. Merchants' nat. bank, 330 Chestnut St. Per 9, 29, '97, 2.25 p. m. F. B. Reeves, vice-pres. Girard bank. Per 9, 29, '97, 2.30 p. m. B. M. Faries, ass't cash. Fourth St. nat. bank. Per 9, 30, '97, 9.45 a. m. Jas. A. Irwin, cashier 8th nat. bank. Left 9, 30, '97, 8.30 a. m. Residence of J. P. Donaldson, treasurer of Huntingdon & Broad Top R. R. Co., 4031 Baltimore Ave. Per 9, 30, '97, 4.15 p. m. Oliver Long, of the firm of James Long Bro. & Co., 263 Chestnut St. Left 10, 1, '97, 8.50 a. m. Residence of C. H. Schermerhorn, 304 N. 40th St., sec. of the Niagara Mining & Smelting Co. D'Autrech. M. H. as to McCullough.

Attached as within commanded and made known to garnishee as follows: Union Trust Co., by giving, Sept. 29, 1897, at 1 o'clock and 45 minutes p. m., a true and attested copy of the within writ to J. Simpson Africa, president of said company, and making known to him the contents thereof; and Merchants' National Bank, by giving, Sept. 29, 1897, at 2 o'clock and 20 minutes p. m., a like copy to F. W. Ayer, president of said bank, and making known to him the contents thereof; and Girard National Bank, by giving, September 29, 1897, at 2 o'clock and 25 minutes p. m., a like copy to F. B. Reeves, vice-pres't of said bank, and making known to him the contents thereof; and the Fourth Street National Bank, by giving, Sept. 29, 1897, at 2 o'clock and 30 minutes p. m., a like copy to B. M. Faries, ass't cashier of said bank, and making known to him the contents thereof; and 8th National Bank, by giving, Sept. 30, 1897, at 9 o'clock and 45 minutes a. m., a like copy to James A. Irwin, cashier of said bank, and making known to him the contents thereof; and the firm of James Long, Bro. and Company, by giving, Sept. 30, 1897, at 4 o'clock and 15 minutes p. m., a like copy to Oliver Long, of said firm, and making known to him the contents thereof; and the Huntingdon & Broad Top Mountain Railroad and Coal Co., by leaving, Sept. 30, 1897, at 8 o'clock and 30 minutes a. m., a like copy at the dwelling-house of J. P. Donaldson, treasurer of said company, residing at 4031 Baltimore avenue, with an adult member of his family; and the Niagara Mining and Smelting Company, by leaving, Oct. 1, 1897, at 8 o'clock and 50 minutes a. m., a like copy at the dwelling-house of C. H. Schmerhorn, secretary of said company, residing at 304 N. 40th St., with an adult member of his family; and *nihil habent* as to M. Simpson McCullough, gernishee, and James Long, def't.

So answers—

JOHN J. CURLEY,
Deputy Sheriff.

ALEXANDER CROW, JR., *Sheriff.*

Fieri Facias.

COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, Greeting:

We command you that of the goods and chattels, lands and tenements, of James Long, defendant, in your bailiwick you cause to be levied as well *as* the sum of thirty-one thousand four hundred and ninety-nine dollars, lawful money of Pennsylvania, which
42 was adjudged — Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, plaintiff, lately in our court of common pleas, No. 4, of the county of Philadelphia, in a certain action of assumpsit between the said plaintiff and said defendant, as also the sum of ten dollars and eighty-seven cents for the costs and charges by the said plaintiff about its suit in that behalf expended, whereof the said defendant is convict, as appears of record, &c.

And have you those moneys before our judges, at Philadelphia, at our said court, there to be held the first Monday October next, to render to the said plaintiff for the judgment debt, damages, and costs aforesaid; and have you then and there this writ.

Witness the Honorable Michael Arnold, president judge of our said court, at Philadelphia, the 29th day of September, in the year of our Lord one thousand eight hundred and ninety-seven (1897).

J. U. G. HUNTER,
Pro Prothonotary.

Endorsement: 604, June term, 1897, court of common pleas, No. 4. Commonwealth of Pennsylvania, at the suggestion, &c., *vs.* James Long. *Fieri facias.* Real debt, 31,499.00; int. from 9, 27, '97; —— ——, att'y, &c., 7.25; proth'y, 3.37; crier & sat., .25; *fi. fa.*, 1.50; service, .25; att. surjudg't, 1.25; costs on same, att'y, &c.,
43 6.00; proth'y, 3.62; garn. att'y, 13.00. Sheriff's office, Sep. 29, 1897, 10.10 o'clock. Wiler, Crawford, Loughlin & Dallas. *Nulla bona.* So answers Alexander Crow, Jr., sheriff.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company under the Will of Benjamin Milnes, Dec'd, *vs.* JAMES LONG, Defendant, and EIGHTH National Bank *et al.*, Garnishee.	C. P., No. 4, June Term, 1897. No. 604.

To prothonotary:

Enter my appearance for the Eighth National Bank, one of the above-named garnishees.

JOHN ROBERTS,
Att'y for Eighth Nat. Bk.

9, 30, '97.

Endorsement: No. 604, June term, 1897, C. P., No. 4. Commonwealth of Penna., &c., *vs.* James Long, def't, and the 8th Nat. Bk. *et al.*, garnishee-. Order for appearance. Filed Sep. 30, 1897. J. Kenderden, pro proth'y. John Roberts, att'y for 8th Nat. Bank.

COMMONWEALTH OF PENNSYLVANIA, &c.,
vs.
JAMES LONG, Defendant; GIRARD National Bank *et al.*, Garnishees.
} C. P., No. 4, June Term, 1897. No. 604.

44 Please enter our appearance for the Girard National Bank, garnishee in the above suit.

MORGAN & LEWIS,
Att'ys for Garnishee.

Sept. 30, 1897.

To the Hon. M. Russell Thayer, proth'y.

Endorsement: 604, June, '97, C. P., No. 4. Commonwealth, &c., *vs.* James Long, def't; Girard Nat'l Bank, garn. Order for appearance. Filed Sept. 30, 1897. Pennypacker, pro proth'y. Morgan & Lewis.

COMMONWEALTH OF PENNSYLVANIA, &c.,
vs.
JAMES LONG, Defendant, and FOURTH Street National Bank, Garnishee.
} C. P., No. 4, June Term, 1897. No. 604.

Enter my appearance for the garnishee, The Fourth Street National Bank, in the above-entitled case.

R. C. DALE.

To the prothonotary.

Endorsement: 604, June term, 1897, C. P., No. 4. Commonwealth of Pennsylvania, etc., *vs.* James Long, def't, and Fourth Street Nat'l Bank, gar. Appearance for garnishee. Filed Sept. 30, 1897. J. Kenderden, pro proth'y. R. C. Dale.

45 COMMONWEALTH OF PENNSYLVANIA, to Use, &c.,
vs.
JAMES LONG, Defendant, and THE UNION Trust Company, Garnishee.
} C. P., No. 4, June Term, 1897. No. 604. Att. Surjudgment.

To the prothonotary:

Enter my appearance for The Union Trust Company, the above-named garnishee.

PERCY B. METZGER,
Attorney for The Union Trust Company, Garnishee.

October 1, 1897.

Endorsement: No. 604, June term, 1897, C. P., No. 4. Commonwealth of Pennsylvania, to use, &c., *vs.* James Long, defendant, and The Union Trust Company, garnishee. Order for appearance. Filed Oct. 1, 1897. J. Briggs, pro proth'y. Metzger.

In the Court of Common Pleas, No. 4, of the County of Philadelphia, June T., 1897.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee, &c., *vs.* JAMES LONG, Defendant, and THE HUNTINGDON and Broad Top Mountain R. R. & Coal Co. *et al.*, Garnishees.	No. 604. Att. Surjudgment.

Enter my appearance for the Huntingdon and Broad Top Mountain Railroad and Coal Company, garnishees.

FRANK W. PAUL,
Att'y for Garnishees.

To prothonotary.

46 Endorsement: 604, C. P., No. 4, June term, '97. Commonwealth, to use, &c., *v.* James Long (def't) & The Huntingdon & Broad Top Mt R. R. & C. Co. *et al.*, garnishees. Order for entry of appearance for Huntingdon & B. T. — R. R. Co., garnishees. Filed Oct. 1, 1897. J. Kenderden, pro proth'y. F. W. Paul.

COMMONWEALTH OF PENNSYLVANIA, to the Use, etc., *vs.* JAMES LONG, Defendant; MERCHANTS' NATIONAL Bank *et al.*, Garnishees.	C. P., No. 4, June Term, 1897. 604.

To the prothonotary:

Enter my appearance for The Merchants' National Bank, summoned as one of the garnishees in the above case.

Yours, HENRY T. DECHERT,
Attorney for Merchants' National Bank, Garnishee.

Sept. 30, 1897.

Endorsement: 604, June term, 1897, C. P., No. 4. Commonwealth of Pennsylvania, to use, etc., *vs.* James Long, defendant; Merchants' National Bank *et al.*, garnishees. Order for appearance for Merchants' National Bank, garnishee. Filed Oct. 1, 1897. J. Briggs, pro proth'y. Henry T. Dechert.

COMMONWEALTH OF PENNSYLVANIA, to Use, &c., *vs.* JAMES LONG, Defendant, and THE UNION TRUST Company, Garnishee.	C. P., No. 4, June Term, 1897. No. 604. Att. Surjudgment.

The Union Trust Company, the above-named garnishee, pleads *nulla bona*.

PERCY B. METZGER,
Attorney for Garnishee.

October 1, '97.

47 Endorsement: No. 604, June term, 1897, C. P., No. 4. Commonwealth of Pennsylvania, to use, &c., *vs.* James Long, defendant, and The Union Trust Company, garnishee. Plea of garnishee. Oct. 1, 1897. J. Briggs, pro proth'y. Metzger.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under Will of Benjamin Milnes, Dec'd, *vs.* JAMES LONG.	C. P., No. 4, J., '97. 604.

Issue att. alias surjudg't and summon M. Simpson McCullough as garnishee; retbl. *sec. reg.*

A. D. WILER.
CRAWFORD, LOUGHLIN & DALLAS.

To proth'y of C. P.

Endorsement: C. P., No. 4, 604, June term, 1897. Commonwealth of Penna., &c., *v.* James Long, pr. for alias att. surjudg't *vs.* M. Simpson McCullough. Filed Oct. 5, 1897. Hunter, pro proth'y. Wiler, Crawford, Loughlin & Dallas.

Attachment Surjudgment.

COUNTY OF PHILADELPHIA, *ss*:

The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, Greeting:

We command you, as before we did, that you levy upon and attach the goods and chattels, stocks, moneys, and interests of and debts due to James Long, defendant, in satisfaction of a certain judgment obtained in our court of common pleas, No. 4, of the county of Philadelphia, at the suit of Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth
48 Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, plaintiff, against said defendant, of June term, 1897, No. 604, for the sum of

thirty-one thousand four hundred and ninety-nine dollars, with interest from the 29th day of September, 1897, and costs.

And also that by honest and lawful men of your bailiwick you make known to the said defendant and to M. Simpson McCullough and all other persons in whose hands or possession the said goods and chattels, stocks, moneys, interest, and debts or any of them may be attached, as garnishees, that they be and appear before our said court, at Philadelphia, on the first Monday of November next, to show, if anything they, the said defendant or the said garnishees, have to say, why the said judgment besides costs of suit should not be levied of the effects of the said defendant in the hands of said garnishee; and have you then and there this writ.

Witness the Honorable Michael Arnold, president judge of our said court, at Philadelphia, the fifth day of October, in the year of our Lord one thousand eight hundred and ninety-seven (1897).

J. U. G. HUNTER,
Pro Proth'y.

Endorsement: 604, June term, 1897, court of common pleas, No. 4. Commonwealth of Pennsylvania, at the suggestion, &c., *vs.* James Long, def't; M. Simpson McCullough, garnishee. 49 Alias att. surjudgment *vs.* M. Simpson McCullough. Real debt, 31,499.00; int. from Sept. 29, '97, —; att'y, writ, &c., 7.25; proth'y, 3.37; cr. and sat., .25; jury fee, —; att. surjudgment, 2.00; costs on same—att'y, 6.00; proth'y, 3.62; costs on prior att. garn., att'y, 13.00. Chestnut St. Nat'l Bank, 11 a. m., 10, 28, '97. Wiier, Crawford, Loughlin & Dallas. 9.05 a. m. Per., 10, 6, '97, M. Simpson McCullough, Market St. wharf. D'Autrech. Per., 10, 28, '97, 11.35 a. m., Wm. Steele, cashier, 721 Chestnut St. D'Autrech.

Attached as within commanded and made known to garnishees as follows, viz., M. Simpson McCullough, by giving to him Oct. 6, 1897, at 9 o'clock and 5 minutes a m., a true and attested copy of the within writ and making known to him the contents thereof, and Chestnut Street National Bank, by giving Oct. 28, 1897, at 11 o'clock and 35 minutes a. m., a like copy to William Steele, cashier of said bank, and making known to him the contents thereof, and *nihil habet* as to James Long, def't.

So answers—

JOHN J. CURLEY, *Deputy Sheriff.*
ALEXANDER CROW, JR., *Sheriff.*

COMMONWEALTH OF PENNA., at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Dec'd, *vs.* JAMES LONG, Defendant; M. SIMPSON MCCULLOUGH, Garnishee.	C. P., No. 4, June Term, 1897. No. 604.

Enter my appearance for M. Simpson McCullough, garnishee in the above case.

GEO. TUCKER BISPHAM,
Girard Building.

October 8, 1897.

To the prothonotary common pleas.

50 Endorsement: No. 604, June term, 1897, common pleas, No. 4. Commonwealth of Pa., at the suggestion, etc., *vs.* James Long, def't; M. Simpson McCullough, garn. Order for appearance. Filed Oct. 8, 1897. J. Briggs, pro proth'y. Bispham.

In the Court of C. P., No. 4, of June Term, 1897.

JAMES LONG, Defendant, and HUNTINGDON & BROAD TOP MOUNTAIN R. R. & COAL CO., Garnishee. No. 604. Attachment.

Interrogatories to the Above-named Garnishee.

First. Do you know the defendant named in the above-stated action?

Second. Have you had any business transactions with the said defendant? If yea, how did your accounts stand at the time the writ in the above case was served upon you? Was there or was there not at that time, or has there been since, up to the time of your answering, a balance in your hands in favor of the said defendant? State the amount particularly.

Third. Were you, at the time the writ in the above case was served upon you, or have you been at any time since, and when, indebted to the said defendant in any manner whatsoever, or did the said defendant hold any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter to become due, upon which you had become in any manner
51 liable? State the character and amount of such indebtedness, and when and how the same arose.

Fourth. At the time the writ in the above case was served upon you, or at any time since, did the said defendant claim from you any money or property on any account whatsoever? Was there then any debt or demand in suit between you? Answer particularly.

Fifth. Had you in your possession or under your control, when the writ in the above case was served upon you, any goods or mer-

chandise or any property, estate, or effects whatsoever, real or personal, belonging to the said defendant or in which the said defendant was in any manner interested? If aye, state the nature, quantity, and value thereof.

Sixth. Have any letters been received by you from the defendant or from any one wherein it was alleged, represented, or stated that at the time the writ in the above case was served upon you, or at any time since, the said defendant had any claim or demand against you whatsoever? Annex copies thereof.

Seventh. At the time the writ in the above case was served upon you or at any time since did the defendant hold any stock or bonds in your company? If aye, state the same particularly. If
52 you answer no, then state if the defendant was not, shortly prior to the service of this writ, a stockholder or bondholder in your company. If so, then state the number of shares of stock and bonds, when they were transferred, and to whom.

A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement.

To the garnishee above named or its attorney:

Please take notice that interrogatories, of which the foregoing is a copy, have been filed in the above-stated case, and that a rule has been entered upon the garnishee in the said case to answer the same within twenty days or judgment *sec. reg.*

Yours respectfully,
A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement: Court of common pleas, 4, June term, 1897. No. 604. Attachment. James Long, defendant, and Huntingdon & Broad Top Mountain R. R. & Coal Co., garnishee. Interrogatories to garnishee. Enter rule on said garnishee to answer the within interrogatories in 20 days or judgment *sec. reg.* A. D. Wiler, Crawford, Loughlin & Dallas. To the prothonotary of the said court. Filed Oct. 1, 1897. Pennypacker, pro proth'y.

53 In the Court of Common Pleas of Philadelphia County, of June Term, 1897.

JAMES LONG, Defendant, and FOURTH STREET NATIONAL BANK, Garnishee. No. 604. Attachment.

Interrogatories to the Above-named Garnishee.

First. Do you know the defendant named in the above-stated action?

Second. Have you had any business transactions with the said defendant? If yea, how did your accounts stand at the time the writ in the above case was served upon you? Was there or was

there not at that time or has there been since, up to the time of your answering, a balance in your hands in favor of the said defendant? State the amount particularly. If you answer no, then state if, shortly prior to the service of this attachment, the defendant did not have a deposit account in your bank; if so, state when and how the same was closed.

Third. Were you at the time the writ in the above case was served upon you or have you been at any time since, and when, indebted to the said defendant in any manner whatsoever; or did the said defendant hold any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter
54 to become due upon which you had become in any manner liable? State the character and amount of such indebtedness and when and how the same arose.

Fourth. At the time the writ in the above case was served upon you or at any time since did the said defendant claim from you any money or property on any account whatsoever? Was there then any debt or demand in suit between you? Answer particularly.

Fifth. Had you in your possession or under your control when the writ in the above case was served upon you any goods or merchandise or any property, estate, or effects whatsoever, real or personal, belonging to the said defendant or in which the said defendant was in any manner interested? If aye, state the nature, quantity, and value thereof.

Sixth. Have any letters been received by you from the defendant or from any one wherein it was alleged, represented, or stated that at the time the writ in the above case was served upon you or at any time since the said defendant had any claim or demand against you whatsoever? Annex copies thereof.

Seventh. At the time the writ in the above case was served upon you or at any time since did the defendant hold any stock in your bank? If aye, state the number of shares. If you answer
55 no, then state if the defendant was not shortly prior to the service of this writ a stockholder in your bank. If so, then state the number of shares, when they were transferred and to whom.

A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement.

To the garnishee above named or its attorney:

Please take notice that interrogatories of which the foregoing is a copy have been filed in the above-stated case, and that a rule has been entered upon the garnishee in the said case to answer the same within twenty days, or judgment *sec. reg.*

Yours respectfully,

A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement: Court of common pleas, 4, of Philada. county, June term, 1897. No. 604. Attachment. James Long, defendant, and Fourth Street National Bank, garnishee. Interrogatories to Fourth Street National Bank, garnishee. Enter rule on said garnishee to answer the within interrogatories in 20 days, or judgment *sec. reg.* A. D. Wiler, Crawford, Loughlin & Dallas, attorneys for plaintiff. To the prothonotary of the said court. Filed Oct. 19, 1897. Pennypacker, pro proth'y.

56 In the Court of Common Pleas, 4, of Philadelphia County, of June Term, 1897.

JAMES LONG, Defendant, and GIRARD NATIONAL BANK, Garnishee No. 604. Attachment.

Interrogatories to the Above-named Garnishee.

First. Do you know the defendant named in the above-stated action?

Second. Have you had any business transactions with the said defendant? If yea, how did your accounts stand at the time the writ in the above case was served upon you? Was there or was there not at that time or has there been since, up to the time of your answering, a balance in your hands in favor of the said defendant? State the amount particularly. If you answer no, then state if shortly prior to the service of this writ of attachment the defendant did not have a deposit account in your bank. If so, state when and how the same was closed.

Third. Were you at the time the writ in the above case was served upon you or have you been at any time since, and when, indebted to the said defendant in any manner whatsoever; or did the said defendant hold any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter to
57 become due upon which you had become in any manner liable? State the character and amount of such indebtedness and when and how the same arose.

Fourth. At the time the writ in the above case was served upon you or at any time since did the said defendant claim from you any money or property on any account whatsoever? Was there then any debt or demand in suit between you? Answer particularly.

Fifth. Had you in your possession or under your control when the writ in the above case was served upon you any goods or merchandise or any property, estate, or effects whatsoever, real or personal, belonging to the said defendant or in which the said defendant was in any manner interested? If aye, state the nature, quantity, and value thereof.

Sixth. Have any letters been received by you from the defendant or from any one wherein it was alleged, represented, or stated that at the time the writ in the above case was served upon you or at

any time since the said defendant had any claim or demand against you whatsoever? Annex copies thereof.

Seventh. At the time the writ in the above case was served upon you or at any time since did the defendant hold any stock in your bank? If aye, state the number of shares. If you answer
58 no, then state if the defendant was not shortly prior to the service of this writ a stockholder in your bank. If so, then state the number of shares, when they were transferred and to whom.

A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement.

To the garnishee above named or its attorney:

Please take notice that interrogat ies, of which the foregoing is a copy, have been filed in the above-stated case, and that a rule has been entered upon the garnishee in the said case to answer the same within twenty days, or judgment *sec. reg.*

Yours respectfully,

A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement: Court of common pleas, 4, of Phila. county, June term, 1897. No. 604. Attachment. James Long, defendant, and Girard National Bank, garnishee. Interrogatories to Girard National Bank, garnishee. Enter rule on said garnishee to answer the within interrogatories in 20 days, or judgment *sec. reg.* A. D. Wiler, Crawford, Loughlin & Dallas, attorneys for plaintiff. To the prothonotary of the said court. Filed Oct. 19, 1897. Pennypacker, pro proth'y.

In the Court of Common Pleas of Philadelphia County, of June Term, 1897.

JAMES LONG, Defendant, and EIGHTH NATIONAL BANK, Garnishee. No. 604. Attachment.

Interrogatories to the Above named Garnishee.

First. Do you know the defendant named in the above-stated action?

59 Second. Have you had any business transactions with the said defendant? If yea, how did your accounts stand at the time the writ in the above case was served upon you? Was there or was there not at that time or has there been since, up to the time of your answering, a balance in your hands in favor of the said defendant? State the amount particularly. If you answer no, then state if, shortly prior to the service of this attachment, the defend-

ant did not have a deposit account in your bank. If so, state when and how the same was closed.

Third. Were you at the time the writ in the above case was served upon you or have you been at any time since, and when, indebted to the said defendant in any manner whatsoever, or did the said defendant hold any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter to become due upon which you had become in any manner liable? State the character and amount of such indebtedness and when and how the same arose.

Fourth. At the time the writ in the above case was served upon you or at any time since did the said defendant claim from you any money or property on any account whatsoever? Was there then any debt or demand in suit between you? Answer particularly.

60 Fifth. Had you in your possession or under your control when the writ in the above case was served upon any goods or merchandise or any property, estate, or effects whatsoever, real or personal, belonging to the said defendant or in which the said defendant was in any manner interested? If aye, state the nature, quantity, and value thereof.

Sixth. Have any letters been received by you from the defendant or from any one wherein it was alleged, represented, or stated that at the time the writ in the above case was served upon you or at any time since the said defendant had any claim or demand against you whatsoever? Annex copies thereof.

Seventh. At the time the writ in the above case was served upon you or at any time since did the defendant hold any stock in your bank? If aye, state the number of shares. If you answer no, then state if the defendant was not shortly prior to the service of this writ a stockholder in your bank. If so, then state the number of shares, when they were transferred, and to whom.

A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement.

To the garnishee above named or its attorney:

Please take notice that interrogatories, of which the foregoing is a copy, have been filed in the above-stated case, and that a
61 rule has been entered upon the garnishee in the said case to answer the same within twenty days, or judgment *sec. reg.*

Yours respectfully,
A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement: Court of common pleas, 4, of Philada. county, June term, 1897. No. 604. Attachment. James Long, defendant, and Eighth National Bank, garnishee. Interrogatories to Eighth National Bank, garnishee. Enter rule on said garnishee to an-

swer the within interrogatories in 20 days, or judgment *sec. reg.* A. D. Wiler, Crawford, Loughlin & Dallas, attorneys for plaintiff. To the prothonotary of the said court. Filed Oct. 19, 1897. Pennypacker, pro proth'y.

In the Court of Common Pleas of Philadelphia County, June Term, 1897.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use, &c.,
vs.
JAMES LONG, Defendant; THE UNION Trust Company, Garnishee. } No. 604. Attachment.

Interrogatories to the Above-named Garnishee.

First. Do you know the defendant named in the above-stated action?

Second. Have you had any business transactions with the said defendant? If yea, how did your accounts stand at the time the writ in the above case was served upon you? Was there or was there not at that time or has there been since up to the time
62 of your answering a balance in your hands in favor of the said defendant? State the amount particularly. If you answer no, then state if shortly prior to the service of this attachment the defendant did not have a deposit account in your company. If so, state when and how the same was closed.

Third. Were you at the time the writ in the above case was served upon you or have you been at any time since, and when, indebted to the said defendant in any manner whatsoever, or did the said defendant hold any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter to become due upon which you had become in any manner liable? State the character and amount of such indebtedness and when and how the same arose.

Fourth. At the time the writ in the above case was served upon you or at any time since did the said defendant claim from you any money or property on any account whatsoever? Was there then any debt or demand in suit between you? Answer particularly.

Fifth. Had you in your possession or under your control when the writ in the above case was served upon you any goods or merchandise or any property, estate, or effects whatsoever, real or personal, belonging to the said defendant, or in which the said defendant was in any manner interested? If aye, state the nature, quantity, and value thereof.

63 Sixth. Have any letters been received by you from the defendant or from any one wherein it was alleged, respresented, or stated that at the time the writ in the above case was served upon you or at any time since the said defendant had any claim or demand against you whatsoever? Annex copies thereof.

Seventh. At the time the writ in the above case was served upon you or at any time since did the defendant hold any stock in your company? If aye, state how many shares. If you answer no, then state if the defendant was not, shortly prior to the service of this writ, a stockholder in your company. If so, state the number of shares and when they were transferred and to whom.

Eighth. Does the defendant appear as the registered owner of any stock or bond of the Niagara Mining and Smelting Company, of which your company is the registrar? If aye, state the amount of same; if no, then state if the defendant did not, shortly prior to the service of the writ in this case, appear on said books as the owner of stock or bonds; and, if so, state the amount of same and when they were transferred and to whom.

ALFRED D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

64 Endorsement.

To the garnishee above named or P. B. Metzger, Esq., attorney for garnishee:

Please take notice that interrogatories, of which the foregoing is a copy, have been filed in the above-stated case, and that a rule has been entered upon the garnishee in the said case to answer the same within twenty days, or judgment *scc. reg.*

Yours respectfully,
ALFRED D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement: Court of common pleas, 4, of Philada. county, June term, 1897. No. 604. Attachment. Commonwealth of Penna., &c., *vs.* James Long, defendant, and The Union Trust Co., garnishee. Interrogatories to Union Trust Co., garnishee. Enter rule on said garnishee to answer the within interrogatories in 20 days, or judgment *scc. reg.* A. D. Wiler, Crawford, Loughlin & Dallas, attorneys for plaintiff. To the prothonotary of the said court. Filed Oct. 19, 1897. Pennypacker, pro proth'y.

In the Court of Common Pleas of Philadelphia County, June Term, 1897.

JAMES LONG, Defendant, and MERCHANTS' NATIONAL BANK, Garnishee. No. 604. Attachment.

Interrogatories to the Above-named Garnishee.

First. Do you know the defendant named in the above-stated action?

Second. Have you had any business transactions with the said defendant? If yea, how did your accounts stand at the time the writ in the above case was served upon you? Was there or was

there not at that time or has there been since, up to the time
65 of your answering, a balance in your hands in favor of said defendant? State the amount particularly. If you answer no, then state if shortly prior to the service of this writ the defendant did not have a deposit account in your bank. If so, state when and how the same was closed.

Third. Were you at the time the writ in the above case was served upon you or have you been at any time since, and when, indebted to the said defendant in any manner whatsoever, or did the said defendant hold any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter to become due upon which you had become in any manner liable? State the character and amount of such indebtedness and when and how the same arose.

Fourth. At the time the writ in the above case was served upon you or at any time since did the said defendant claim from you any money or property on any account whatsoever? Was there then any debt or demand in suit between you? Answer particularly.

Fifth. Had you in your possession or under your control, when the writ in the above case was served upon you, any goods or merchandise or any property, estate, or effects whatsoever, real or personal, belonging to the said defendant or in which the said
66 defendant was in any manner interested? If aye, state the nature, quantity, and value thereof.

Sixth. Have any letters been received by you from the defendant or from any one wherein it was alleged, represented, or stated that at the time the writ in the above case was served upon you or at any time since the said defendant had any claim or demand against you whatsoever? Annex copies thereof.

Seventh. At the time the writ in the above case was served upon you or at any time since, did the defendant hold any stock in your bank? If aye, state the number of shares. If you answer no, then state if the defendant was not shortly prior to the service of this writ a stockholder in your bank. If so, then state the number of shares, when they were transferred, and to whom.

A. D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement.

To the garnishee above named or its attorney:

Please take notice that interrogatories, of which the foregoing is a copy, have been filed in the above-stated case, and that a rule has been entered upon the garnishee in the said case to answer the same within twenty days, or judgment *sec. reg.*

Yours respectfully,

ALFRED D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

Endorsement: Court of common pleas, 4, of Philada. county, June term, 1897. No. 604. Attachment. James Long, defendant, and Merchants' National Bank, garnishee. Interrogatories
67 to the Merchants' National Bank, garnishee. Enter rule on said garnishee to answer the within interrogatories in 20 days, or judgment *sec. reg.* Alfred D. Wiler, Crawford, Loughlin & Dallas, attorneys for plaintiff. To the prothonotary of the said court. Filed Oct. 19, 1897. Pennypacker, pro proth'y.

COMMONWEALTH OF PENNSYLVANIA, &c., *vs.* JAMES LONG, Defendant, and FOURTH Street National Bank, Garnishee. } June Term, 1897, C. P., No. 4. No. 604.

Answer of the Fourth Street National Bank to the Interrogatories Filed in the Above-entitled Case.

The garnishee answers all the interrogatories filed in the negative, the said James Long never having been a stockholder or depositor in said bank, nor has the said bank had any business transactions with him whatsoever.

RICHARD C. DALE,
Att'y for Garnishee.

STATE OF PENNSYLVANIA, *County of Philadelphia,* } *ss:*

R. H. Rushton, being duly sworn according to law, doth depose and say: I am the cashier of The Fourth Street National Bank, garnishee in the above-entitled case; that the statements
68 made in the foregoing answers are just and true, as I verily believe.

R. H. RUSHTON.

Sworn and subscribed to before me this 21st day of October, 1897.
[SEAL.] A. P. RUTHERFORD,
Notary Public.

Endorsement: 604, June term, 1897, C. P., No. 4. Commonwealth of Pennsylvania *vs.* James Long, def't, and Fourth Street National Bank, garnishee. Answer to interrogatories. Filed Oct 22, 1897. J. Briggs, pro proth'y. R. C. Dale.

COMMONWEALTH, to Use, *vs.* JAMES LONG, Defendant; MERCHANTS' National Bank, Garnishee. } C. P., No. 4, June Term, 1897. 604.

Merchants' National Bank of Philadelphia, summoned as garnishee in this case, answers the several interrogatories as follows:

First. The officers of the garnishee do know the defendant in the above-stated action.

Second. The garnishee has had business transactions with the defendant, but not for several years. There was no account be-

tween the defendant and garnishee at the time the writ in this case was served upon garnishee. There was not then nor has there been since that time any balance in the hands of the said
69 garnishee in favor of the said defendant. The defendant did not have a deposit account with the garnishee shortly prior to the service of this writ.

Third. Neither at the time the writ in this case was served upon the garnishee nor at any time since has the garnishee been indebted to the defendant in any manner whatsoever, nor did the defendant hold any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter to become due upon which the garnishee has in any manner become liable.

Fourth. Neither at the time of the service of the writ in this case nor at any time since did the defendant claim from the garnishee any money or property on any account whatsoever. There was not any debt or demand then in suit between garnishee and defendant.

Fifth. When the writ in this case was served upon the garnishee it had not in its possession or under its control any goods or merchandise or any property, estate, or effects whatsoever, real or personal, belonging to the defendant or in which the said defendant was in any manner interested.

Sixth. The garnishee has received no letters from the defendant or from any one wherein it was alleged, represented, or stated that at the time the writ in this case was served or at any time
70 since the said defendant had any claim or demand against the garnishee whatsoever.

Seventh. Neither at the time the writ in this case was served upon the garnishee nor at any time since has the defendant been a stockholder in the garnishee, and he had not been a stockholder in the garnishee for several years prior to this time.

The said garnishee prays to be hence dismissed with its reasonable costs in its behalf expended.

MERCHANTS' NATIONAL BANK,
By HARTMAN BAKER, *Cashier.*

Hartman Baker, being duly affirmed according to law, says that he is the cashier of the Merchants' National Bank of Philadelphia, summoned as garnishee in the above case, and that the facts set forth in the foregoing answer are truly stated.

HARTMAN BAKER.

Affirmed and subscribed before me this 21st day of October, A. D. 1897.

[SEAL.] JOHN W. TAGGART,
Notary Public.

Endorsement: 604, June term, 1897, C. P., No. 4, Commonwealth, to use, &c., *vs.* James Long, defendant; Merchants' National Bank of Phila., garnishee. Answer of the Merchants' National Bank of Philadelphia to interrogatories. Filed Oct. 22, 1897. J. Briggs, pro proth'y. Henry T. Dechert.

71 COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of, &c., *vs.* JAMES LONG, Defendant, and THE UNION Trust Co., Garnishee. } C. P., No. 4, June Term, 1897. No. 604. Att. Surjudgment.

CITY OF PHILADELPHIA, *ss:*

Richard S. Edwards, being duly sworn according to law, says that he is the treasurer of The Union Trust Company, the garnishee above named, and that in answer to the interrogatories filed states as follows:

To the first interrogatory the garnishee answers, "Yes."

To the second interrogatory the garnishee answers, "No."

And, further answering, the garnishee says that the said defendant has had no deposit account upon the books of the said garnishee for the past twelve months and upwards.

To the third interrogatory the garnishee answers, "No."

To the fourth interrogatory the garnishee answers, "No."

To the fifth interrogatory the garnishee answers, "No."

To the sixth interrogatory the garnishee answers, "No."

To the seventh interrogatory the garnishee answers that the said defendant has not had any stock of the said garnishee in his, the said defendant's, name since the year 1888, nor to the knowledge of the said garnishee has the said defendant any of said stock in the name of any one else.

72 To the eighth interrogatory the garnishee says that the registration books of the Niagara Mining and Smelting Company do not contain the name of the said defendant as being the registered owner of any of the bonds of the said mining and smelting company; and, further answering, the garnishee says that it has no knowledge that said defendant holds any of said bonds in the name of any one else.

RICHARD S. EDWARDS. [SEAL.]

Sworn and subscribed to before me this twentieth day of October, 1897.

H. G. HART,
Notary Public.

PERCY B. METZGER,
Attorney for The Union Trust Company, Garnishee.

October 21, 1897.

Endorsement: No. 604, June term, 1897, C. P., No. 4. Commonwealth of Pennsylvania *vs.* James Long, defendant, and The Union Trust Company, garnishee. Answers of garnishee. Filed Oct. 21, 1897. Pennypacker, pro proth'y. Metzger.

73	THE COMMONWEALTH OF PENNSYLVANIA, at the Suggestion, &c., of the Commonwealth Title & Ins. Trust Co., *vs.* JAMES LONG, Defendant, and EIGHTH National Bank, Garnishee.	C. P., No. 4, June Term, 1897. No. 604.

Answers of the Garnishees, The Eighth National Bank, to the Interrogatories Filed in the Above Matter.

In answer to the first interrogatory, James A. Irwin, cashier of the Eighth national bank, says that he is acquainted with the defendant named in the above-stated action.

In answer to the second interrogatory, he says that the Eighth national bank had business transactions with the defendant at the time the writ in the above case was served. The defendant had an account with the garnishee, The Eighth National Bank, and at that time — and there now is due a balance in favor of said defendant, James Long, amounting to the sum of seven dollars and eighty-six cents.

In answer to the third interrogatory, the garnishee says that the Eighth national bank at the time of the service of the writ of attachment — and it has been since then indebted to the said defendant in the sum of seven dollars and eighty-six cents.

In answer to the fourth interrogatory, the garnishee says that at the time the writ in the above case was served nor at any time since did the said defendant claim from the garnishee anything
74 more than seven dollars and eighty-six cents. There was no debt or demand in suit between the garnishee and the defendant.

In answer to the fifth interrogatory, the garnishee had in its possession only the balance due on deposit, to wit, the sum of seven dollars and eighty-six cents, as heretofore stated.

In answer to the sixth interrogatory, no letters have been received from the defendant wherein it was alleged, represented, or stated that at the time the writ in the above case was served, nor at any time since, that the defendant had any claim except as heretofore stated.

In answer to the seventh interrogatory, at the time the writ in the above case was served upon the garnishee the defendant stood credited with thirty-three (33) shares of the capital stock of The Eighth National Bank, the garnishee, which, according to the stock ledger of the garnishee, still remains to the credit of the defendant. The defendant has not, to the knowledge of the garnishee, transferred said stock, at least it has not been transferred on the books of the garnishee, but the garnishee has no knowledge as to whether the stock has been sold by the defendant or not.

The attorney for the garnishee asks for an allowance of twenty-five dollars as attorney's fee in the above matter.

CITY OF PHILADELPHIA, *ss:*

James A. Irwin, cashier of the Eighth national bank,
75 being duly sworn according to law, doth depose and say that the answers as above stated are true to the best of his knowledge, information, and belief.

JAMES A. IRWIN.

Sworn and subscribed to before me this 25th day of October, 1897.

EDWIN F. GLENN,
[SEAL.] *Notary Public.*

Endorsement: No. 604, June T., 1897, C. P., No. 4. The Com. of Pennsylvania, at the suggestion, &c., of the Com. Title Ins. & Trust Co., *vs.* James Long, defendant, and The Eighth National Bank, garnishee. Answers to interrogatories. Filed Oct. 25, 1897. J. Briggs, pro proth'y. John Roberts, att'y for garnishee.

THE COMMONWEALTH OF PENNSYLVANIA, at the Suggestion, &c., of the Commonwealth Title Ins. & Trust Co., *vs.* JAMES LONG, Defendant, and THE EIGHTH National Bank, Garnishee. } C. P., No. 4, June Term, 1897. No. 604.

The garnishee, the 8th National Bank, further answers to the seventh interrogatory filed in the above case as follows:

James Long, the defendant, has, by his attorney, R. P. White, Esq., notified the garnishee that on September 5, 1889, he obtained a loan from the Chestnut Street bank, in the city of Philadelphia, amounting to seventeen thousand eight hundred and thirty-one dollars, and gave as collateral to secure said loan the certificate or certificates of the thirty-three shares of the capital stock of
76 the Eighth national bank; that said loan has not been paid, and that said bank that made the loan still holds the collateral to secure the payment thereof.

A copy of said notice is hereby made a part of the answer to the seventh interrogatory.

"BANK *vs.* LONG.

PHILADELPHIA, *Oct. 27th*, 1897.

John Roberts, Esq.

DEAR SIR: I find that the 33 shares 8th N. bk. stock standing in James Long's name on its books are pledged with the Chestnut St. bank since Sept. 5th, 1889, as collateral for a loan which at the time of the service of the attachment and now amounts to $17,831.

Yours truly,

(Signed) R. P. WHITE."

PHILADELPHIA COUNTY, *ss:*

James A. Irwin, cashier of the Eighth national bank, being duly sworn according to law, doth depose and say that the further answer to the seventh interrogatory is true to the best of his knowledge, information, and belief.

JAMES A. IRWIN.

Sworn and subscribed to before me this 28th day of October, A. D. 1897.

EDWIN F. GLENN,
Notary Public.

[SEAL.]

77 Endorsement: No. 604, June T., 1897, C. P., No. 4. The Com. of Pennsylvania, at the suggestion, &c., *vs.* James Long, defendant, and the 8th National Bank, gar. Supplemental answer to seventh interrogatory. Filed Oct. 26, 1897. P. H. White, pro proth'y. John Roberts, att'y for garnishee.

COMMONWEALTH OF PENNSYLVANIA, to the Use, &c., of the Commonwealth Title Insurance and Trust Company, Trustee, &c., *vs.* JAMES LONG, Defendant; EIGHTH NATIONAL Bank, Garnishee.	C. P., No. 4, June Term, 1897. No. 604.

Enter rule for judgment against the Eighth National Bank, garnishee, for amount admitted to be due in its answers.

ALFRED D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
Attorneys for Plaintiff.

To proth'y of C. P., No. 4.

Endorsement: C. P., 4, 604, June term, 1897. Commonwealth of Pa., &c., to use of Commonwealth Title Ins., &c., Co., trustee, *v.* James Long, def't; 8th Nat'l Bk., gar. Rule for judg't against 8th Nat'l Bank for amount admitted to be due by its answers. Filed Oct. 27, 1897. C. H. W. A. D. Wiler, Crawford, Loughlin & Dallas.

In the Court of Common Pleas, No. 4, of the County of Philadelphia, of June Term, 1897.

COMMONWEALTH OF PENNSYLVANIA, to Use, &c., of the Commonwealth Title, Insurance & Trust Co., Trustee for Mary Rodgers under Will of Benjamin Milnes, Deceased,
v.
JAMES LONG, Defendant, and THE HUNTingdon & B. T. Mt. R. R. & Coal Company, Garnishees.
} No. 604. Attachment.

78 *Answers of the Huntingdon and Broad Top Mountain Railroad and Coal Company, Garnishees.*

1st. Garnishees know defendant.

2nd. Garnishees have had business transactions with defendant a number of years ago, defendant at that time being one of the trustees of the company; but when the writ in the above case was served garnishees had not in their hands, nor have they had since, any balance in favor of defendant.

3rd. When the writ in the above case was served the said garnishees were not indebted to defendant, nor have they since become indebted to him; nor do garnishees know of any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter to become due, held by defendant, upon which the garnishees had become in any manner liable.

4th. The defendant did not claim of the garnishees when the writ in the above case was served any money or property, nor has he since made any such claim. There is no suit now pending between the defendant and garnishees, nor was there any such suit at the time the writ was served.

5th. When the writ in the above case was served garnishees had no goods, merchandise, or property, estate, or effects whatsoever in their possession or under their control belonging to defend-
79 ant or in which he was in any manner interested.

6th. Garnishees have received no letters from defendant or from any one else of the tenor inquired of by the said interrogatory.

7th. Defendant had not at the time the writ in the above case was served any stocks or bonds standing in his name upon the books of the company. The defendant was the owner of twenty-nine shares of the common stock of the railroad company, garnishees, prior to April 1st, 1897, as appears by the stock ledger, but on that day the said twenty-nine shares were transferred by defendant to the order of Ed. B. Smith & Co.

SPENCER M. JANNEY,
President. [SEAL.]

J. P. Donaldson, treasurer of the Huntingdon and Broad Top Mountain Railroad and Coal Company, being duly affirmed, says that the foregoing answers to the interrogatories propounded to the company as garnishees are true.

J. P. DONALDSON, *Treasurer.*

Affirmed and subscribed this fifth day of November, A. D. 1897, before me—

[SEAL.] GEORGE W. SELTZER,
Notary Public.

Endorsement: 604, June T., 1897, C. P., No. 4. Commonwealth, to use, &c., *v.* James Long, defendant, & The Huntingdon & B. T. M. & Coal & R. R., garnishee. Answers of garnishees to interrogatories. Filed Nov. 6, 1897. P. H. White, pro proth'y. Frank W. Paul, att'y for garnishee.

80 In the Court of Common Pleas, 4, of Philada. County, of June Term, 1897.

JAMES LONG, Defendant, and CHESTNUT ST. NAT'L BANK, Garnishee. No. 604. Attachment.

Interrogatories to the Above-named Garnishee.

First. Do you know the defendant named in the above-stated action?

Second. Have you had any business transactions with the said defendant? If yea, how did your accounts stand at the time the writ in the above case was served upon you? Was there or was there not at that time or has there been since, up to the time of your answering, a balance in your hands in favor of the said defendant? State the amount particularly.

Third. Were you at the time the writ in the above case was served upon you or have you been at any time since, and when, indebted to the said defendant in any manner whatsoever, or did the said defendant hold any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due or thereafter to become due upon which you had become in any manner liable? State the character and amount of such indebtedness and

81 when and how the same arose.

Fourth. At the time the writ in the above case was served upon you or at any time since did the said defendant claim from you any money or property on any account whatsoever? Was there then any debt or demand in suit between you? Answer particularly.

Fifth. Had you in your possession or under your control when the writ in the above case was served upon you any goods or merchandise or any property, estate, or effects whatsoever, real or personal, belonging to the said defendant or in which the said defendant was in any manner interested? If aye, state the nature, quantity, and value thereof.

Sixth. Have any letters been received by you from the defendant or from any one wherein it was alleged, represented, or stated that at the time the writ in the above case was served upon you or at any time since the said defendant had any claim or demand against you whatsoever? Annex copies thereof.

Has the defendant, James Long, hypothecated with you securities for a loan? If so, state when said loan was created, and for
82 what amount and what collateral you had from time to time deposited to secure the same, and what collateral you at present have, in whose name they stand, and the amount now due on same.

A. D. WILER,
CRAWFORD, LAUGHLIN & DALLAS,
Attorney- for Plaintiff.

To the garnishee above named or attorney:

Please take notice that interrogatories, of which the foregoing is a copy, have been filed in the above-stated case, and that a rule has been entered upon the garnishee in the said case to answer the same within twenty days, or judgment *sec. reg.*

Yours respectfully,
A. D. WILER,
CRAWFORD, LAUGHLIN & DALLAS,
Attorney- for Plaintiff.

Endorsement: Court of common pleas, 4, of Philada. county, June term, 1897. No. 604. Attachment. James Long, defendant, and Chestnut St. National Bank, garnishee. Interrogatories to garnishee. Filed Nov. 6, 1897. P. W. White, pro proth'y. Enter rule on said garnishee to answer the within interrogatories in 20 days, or judgment *sec. reg.* A. D. Wiler, Crawford, Loughlin & Dallas, attorney- for plaintiff. To the prothonotary of the said court.

COMMONWEALTH OF PENNSYLVANIA, &c., *vs.* JAMES LONG, Defendant; GIRARD NATIONAL Bank, Garnishee.	C. P., No. 4, June Term, 1897. No. 604.

83 *Answers of Girard National Bank, Garnishee, by Francis B. Reeves, Vice-President.*

To the first interrogatory: Yes.

To the second interrogatory: No to every part thereof; the defendant never had an account with the Girard national bank.

To the third interrogatory: No.

To the fourth interrogatory: No; none.

To the fifth interrogatory: No.

To the sixth interrogatory: No.

To the seventh interrogatory: No.

MORGAN & LEWIS,
Att'ys for Girard Nat'l Bank, Garnishee.

Nov. 5, 1897.

STATE OF PENNSYLVANIA, }
City and County of Philadelphia, } ss:

Francis B. Reeves, being duly sworn according to law, doth depose and say the foregoing answers to interrogatories in the above-entitled cause are true.

FRANCIS B. REEVES.

Sworn — and subscribed before me this 5th day of November, 1897.

MORRIS R. BOCKIUS,
Notary Public.

[SEAL.]

84 Endorsement: 604, June term, 1897, C. P., No. 4. Commonwealth, &c., *vs.* James Long, def't; Girard Nat'l Bk., garnishee. Answers of Girard Nat'l Bank, garnishee. Filed Nov. 6, 1897. P. White, pro proth'y. Morgan & Lewis.

THE COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers, *vs.* JAMES LONG, Defendant; CHESTNUT STREET Nat. Bk., Garnishee.	C. P., No. 4, June Term, 1897. No. 604.

Answers of Chestnut Street National Bank, a Garnishee in the Above Case, to the Interrogatories of the Above-named Plaintiff.

First. To the first interrogatory I answer that I know the defendant in the above-stated action.

Second. To the second interrogatory I answer that said bank has had business relations with the defendant; that there was no
85 balance in his favor then, and there has been none since up to this date in the said The Chestnut Street national bank, but that said James Long was indebted to said bank in the sum of $17,831, with interest from the 22nd day of April, 1897.

Third. In answer to third interrogatory, I answer that at the time the writ in above case was served upon the said The Chestnut Street national bank the said bank was not indebted to the said defendant in any manner whatsoever so far as is known to the said bank, and the said bank has no knowledge that at the time the writ in the above case was served the said defendant, James Long, held any bill, bond, note, account, draft, check, due bill, or other instrument of writing then due upon which the said bank had become in any manner liable. Prior to the service of the writ in the above case upon the said bank, to wit, September 20th, 1897, the said bank issued a due bill for the sum of $2,900, of which the following is a true and correct copy:

Number 20968.

Clearing-house Due Bill.

The Chestnut Street national bank.

PHILADELPHIA, *Sept.* 20, 1897.

Due by the Chestnut Street national bank to banks, two
86 thousand nine hundred and — dollars.

This due bill is only good when signed by one and countersigned by another authorized person, and is payable only in the exchanges through the clearing-house the day after issue.

$2,900.00. W. W. PRICE, *Teller.*

Countersigned:
W. STEELE, *Cas.*

And delivered the same to James Long, the defendant, he having closed his account with the said bank. On the 3rd day of November, 1897, the said James Long, the defendant, desiring to appropriate a sufficient amount of the due bill to the payment of the interest then due upon his said indebtedness to the said bank, surrendered the said due bill to the said bank for that purpose, and the bank then issued a new due bill for the amount of the said first due bill, less the amount of the said interest, to wit, for the sum of $2,444.32, of which the following is a true and correct copy:

Number 21231.

Clearing-house Due Bill.

The Chestnut Street national bank.

PHILADELPHIA, *Nov. 3rd*, 1897.

Due by the Chestnut Street national bank to banks, two thousand four hundred and forty-four $\frac{32}{100}$ dollars.

This due bill is only good when signed by one and countersigned by another authorized person, and is payable only in the exchanges through the clearing-house the day after issue.

$2,444.32. W. W. PRICE, *Teller.*

Countersigned:
W. STEELE, *Cas.*

87 And delivered the same to the said James Long, the defendant. The said last-mentioned due bill was afterwards presented to the said bank for payment through the clearing-house and was paid.

Fourth. The defendant, James Long, made no claim at the time the writ in the above case was served upon the said bank or since that time for any money or property on any account whatsoever, except as stated in the answer to the third interrogatory. There was no debt or demand in suit between the said defendant and the said bank.

Fifth. When the writ in the above case was served, the said bank held as collateral security for the indebtedness to it mentioned in the answer to the second interrogatory 77 shares of "Natural Gas Trust stock," of the value of $160 per share, and 33 shares of the capital stock of the Eighth National Bank of Philadelphia, of the value of $264 per share.

Sixth. No.

Seventh. The defendant, James Long, did hypothecate with the said bank the securities mentioned in the answer to the fifth interrogatory, to wit, the 77 shares of Natural Gas Trust stock and 33 shares of the Eighth National Bank stock, as collateral for
88 loans made from time to time to him by the said bank. The said bank has made loans to the said James Long since September 5, 1889, which have been increased and diminished from time to time and for which securities were hypothecated by him with the said bank. The bank does not deem it important for the purposes of this case to go further back than October 29th, 1894; but, if it should be deemed necessary, is willing to exhibit to the court the entire accounts between it and the said defendant, James Long. At the date last named, to wit, October 29, 1894, the defendant, James Long, was indebted to the bank in the sum of $36,000, and for this indebtedness the bank held as collateral security 91 shares of 8th National Bank stock and 88 shares of the Natural Gas Trust stock.

On June 10, 1895, the bank surrendered 20 shares of Natural Gas Trust stock to James Long, leaving a balance of 68 shares.

On June 14, 1895, James Long deposited 9 shares of Natural Gas Trust stock, making a total of 77 shares of Natural Gas Trust stock.

On September 28, 1896, Mr. James Long paid off $13,000 of the loan, leaving a balance due of $23,000.

On December 14, 1896, the bank surrendered 42 shares of the Eighth National Bank stock, leaving a balance in hand of 49 shares.

On March 11, 1897, bank loaned James Long $7,500, mak-
89 ing the total loan $30,500, and James Long deposited 32 shares of the Eighth National Bank stock, making the total of that stock deposited 81 shares.

On April 15, 1897, James Long paid off $5,812.50, leaving a balance due of $24,687.50, and the bank surrendered 22 shares of the Eighth National Bank stock, leaving a balance of said stock of 59 shares.

On April 22, 1897, James Long paid off $6,856.50, leaving a balance due of $17,831.00, and the bank surrendered 26 shares of the Eighth National Bank stock, leaving a balance of said stock of 33 shares; so that upon October 28, 1897, the day on which writ in above case was served, the defendant, James Long, owed the bank $17,831, and the bank held as collateral security for said loan 77 shares of Natural Gas Trust stock and 33 shares of Eighth National Bank stock. The said stock was in the name of James Long.

WILLIAM S. STENGER,
Attorney for Chest. St. National Bank, Garnishee.

COUNTY OF PHILADELPHIA, *ss:*

William Steele, being duly sworn according to law, deposes and says that he is the cashier of The Chestnut Street National Bank, the above-named garnishee; that he has read the foregoing answers, and that the same are true, to the best of his knowledge and belief.

WILLIAM STEELE.

Sworn to and subscribed before me this 24th day of November, A. D. 1897.

JNO. F. REARDON,
Notary Public.

[SEAL.]

Endorsement: 604, C. P., 4, June term, 1897. The Commonwealth, at the suggestion and to the use of the Commonwealth Title and Trust Company, trustee for Mary Rodgers, *vs.* James Long, defendant; Chestnut Street National Bank, garnishee. Filed Nov. 24, 1897. J. Briggs, pro proth'y. W. S. Stenger, att'y for garnishee.

Sci. Fa. Surbill of Discovery.

COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, Greeting:

Whereas Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, plaintiff, did on the 7th day of December, 1897, file a bill of discovery in our court of common pleas, No. 4, for the county of Philadelphia against James Long, defendant, setting forth as in and by the said bill so filed in said court will fully appear, and the said plaintiff praying that a fit remedy may be had against the said defendant, we do therefore command you that you make
91 known to the said James Long, defendant, that he be and appear before our judges, at Philadelphia, at our court of common pleas, No. 4, there to be holden for the said county, the first Monday of January next, to answer the said bill and all such interrogatories as shall be propounded to him or show cause why he should not and abide the judgment of the court in the premises, agreeably to the act of assembly in such case made and provided; and have you then there this writ.

Witness the Honorable Michael Arnold, president of our said court, at Philadelphia, this 7th day of December, in the year of our Lord one thousand eight hundred and ninety-seven (1897).

JAS. W. FLETCHER,
Per Proth'y.

[SEAL.]

Made known to James Long by giving to him, December 8th, 1897, being ten days prior to the return day hereof, a true and at-

tested copy of the within writ, bill of discovery, and interrogatories and making known to him the contents thereof.

So answers—

JOHN J. CURLEY, *Deputy Sheriff.*
ALEXANDER CROW, JR., *Sheriff.*

92 Endorsement: 604, June term, 1897, court of common pleas, No. 4. Commonwealth of Penna., &c., *v.* James Long. *Sci. fa.* surbill of discovery. A. D. Wiler, Crawford, Loughlin & Dallas.

In the Court of Common Pleas, No. 4, of June Term, 1897, Sitting in Equity.

Between THE COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustees for Mary Rodgers under the Will of Benjamin Milnes, Deceased, Plaintiff, and JAMES LONG, Defendant. No. 604.

To the honorable the judges of the said court:

Your orator complains and says:

1. In the court of common pleas, No. 4, of June term, 1897, No. 604, the plaintiff recovered a judgment against the said James Long for the sum of thirty-one thousand four hundred and ninety-nine dollars, the whole amount of which is due, together with interest from September 29, 1897.

2. That the aforesaid judgment against said James Long was obtained on a bond bearing date September 14, 1875, given
93 by him for the faithful performance by John Milnes of his duties as trustee of the estate of Benjamin Milnes, deceased, and which represented the defalcation of said John Milnes. The said John Milnes departed this life on the 28th day of February, A. D. 1897, and that shortly prior to his death the said James Long had made an arrangement with said John Milnes and his children, the exact details of which are unknown to your orator, but which, they are informed, was that said James Long was to pay the defalcation and the children of the said John Milnes was to assign to him certain interest in the estate of their grandfather which they had in remainder to protect him; that before the papers to carry out this arrangement were made the said John Milnes unexpectedly died and his children then refused to carry out their agreement; in consequence thereof the said James Long has refused to pay any part of said judgment.

3. That on May 26, 1887, the said James Long executed to Sarah Long a bond and mortgage in the sum of $20,000, secured on his dwelling-house, north side of Girard avenue and ninety feet east of Sixteenth street, and other premises fully described in said mortgage, same being recorded in Philadelphia county, in Mortgage Book G. G. P. No. 232, page 62, etc., and fully described therein.

4. That shortly thereafter, to wit, September 23, 1887, the
94 said James Long executed another mortgage to his daughter, Sarah Long, to secure the sum of $30,000, secured on his factory building, southeast corner of Second and Oxford streets, and other premises fully described in said mortgage, same being recorded in Philadelphia county, in Mortgage Book G. G. P. No. 255, page 389, etc., and fully described therein.

5. That your deponent is informed that while said mortgages are given to Sarah Long individually, and although executed several months apart, yet the said James Long alleges that same were given for the benefit of said Sarah Long and another daughter, Jane N. Bonbright, and alleges that a large part of the consideration for same was two legacies amounting to $20,000, with interest from the year 1873 or 1874, which were bequeathed to them under the will of one Thomas G. Duncan, and which he alleges he did not pay to them but retained same; but which legacies the said James Long, in his account filed in said estate in orphans' court of Philadelphia county of November, 1876, No. 144, alleges he paid and claimed credit for same and which credit was allowed him.

6. That said James Long, by assignment dated June 10, 1887, assigned a bond and mortgage of M. Simpson McCullough, given to secure the sum of $150,000, and secured on real estate in Longport, New Jersey, to Richard Y. Cook, trustee, for his daughters, Sarah Long and Jane N. Bonbright; which transfer your
95 orator believes to have been made without any valuable consideration.

7. That at said time, to wit, in 1887, the said James Long was liable on said bond of John Milnes and was aware that at said time the said John Milnes was insolvent, as he, the said James Long, was at that time assisting him by endorsing his notes.

And, further, that at said time, to wit, 1887, the said James Long was heavily indebted, having incurred large liabilities by reason of the failure of John and James Hunter, and also by reason of his interest in the Glamorgan Iron Company, and that said transfers were a large part of the tangible property owned by him at that time, his other property being variously entangled, and was made at a time when he was heavily indebted and when he was liable for large future claims, among them being the claim on this bond.

8. That your deponent is further informed that just shortly prior to the obtaining of the judgment in this case the said James Long disposed of certain property held by him, to wit, by assignment of mortgage dated the nineteenth day of March, 1897, he assigned to the fire association a certain mortgage given by A. H. Phillips and others to secure the sum of $15,000; also, on April 1st, 1897, he assigned twenty-nine shares of the common stock of the Hunt-
96 ingdon and Broad Top Railroad Company to the order of E. B. Smith & Co.

9. Your orator has reason to believe that the said defendant, James Long, has real and personal estate wherewith the same may be satisfied, but by reason of the concealment or fraudulent trans-

fer thereof your orator is prevented from having execution of its judgment.

10. The defendant has possession or knowledge of such real or personal estate or can make discovery of such facts as will enable the plaintiffs to have satisfaction of its judgment.

And that the said defendant may make a full and true disclosure and discovery as to the several matters aforesaid, to the end that your orator may be able to have execution of his said judgment—

May it please your honors to grant unto your orator a writ of *scire facias*, to the sheriff of the county of Philadelphia directed, requiring — to make known to the said James Long that he be and appear before this honorable court, at a certain time to be therein appointed, to answer this bill and all such interrogatories as shall be propounded to him, or show cause why he should not, and abide the judgment of this honorable court in the premises.

That your orators may have such other relief in the prem-
97 ises as to your honorable court may seem proper.

And your orator will ever pray, etc.

ALFRED D. WILER,
CRAWFORD, LOUGHLIN & DALLAS,
For the Plaintiff.

Edw'd H. Bonsall, being duly affirmed, doth say that he is the 2nd vice-president of The Commonwealth Title Insurance and Trust Company, the plaintiff in the above bill, and that the facts set forth therein are true to the best of deponent's knowledge, information, and belief.

EDW. BONSALL.

Affirmed and subscribed to before me this 1st day of Dec., A. D. 1897.

ANDREW T. KAY,
[SEAL.] *Notary Public.*

Interrogatories Propounded to said James Long, the Defendant in the Foregoing Bill Named.

1. Did you not make an arrangement with the children of John Milne, as set forth in paragraph two of this bill, or an arrangement similar thereto?

State specifically what same was, and whether you had not made preparation to pay the amount of said defalcation.

If so, then state what you have done with the money which
98 you were to pay to carry out same.

2. Did you not assign a mortgage, dated June 20, 1896, for $15,000, given by A. H. Phillips and wife and Carlton Godfrey and wife to yourself to the fire association by assignment dated March 19, 1897, and recorded March 24, 1897? If so, state what consideration was received from said assignment and what have you done with same.

3. Do you still own a certain mortgage of $2,000 given by Catherine Remington to M. Simpson McCullough, dated August 1, 1883, and recorded August 5, 1883, in Book 14, page 112, etc., and assigned by him to you by assignment dated October 4, 1883, recorded October 5, 1883, in Book 4, page 6, and secured on certain property described thereon at Longport, New Jersey? If you answer no, state when and to whom you assigned same and the consideration received therefor and what disposition you have made of said consideration.

4. State if you did not execute a bond and mortgage to Sarah Long for $20,000, same being dated May 26, 1887, and recorded in Philadelphia County Mortgage Book G. G. P. No. 232, page 62, etc.; also a bond and mortgage to Sarah Long for $30,000, dated September 23, 1887, and also recorded in Philadelphia county in Mortgage Book G. G. P. No. 255, page 389, etc., the consideration or large part of it you allege to be moneys due your daughters, Sarah Long
99 and Jane N. Bonbright, as legacies under the will of one Thomas G. Duncan, of which estate you were the acting executor, and which money you said you never paid to them? If you answer aye, then state if you did not file your account as executor of said estate in the orphans' court of Philadelphia county to November, 1876, No. 144, and in said account did you not claim credit for the following payments:

1874.		
June 30th.	By cash paid James Long's daughters' legatee..	$5,000
July 21st.	By cash, James Long's daughters' legatee, $15,000, less tax.....	14,250

Is not said Sarah Long, the mortgagee above mentioned, and Jane N. Bonbright your daughters, to whom you allege you made said payments? If so, then say whether you did in fact pay them said legacy, as sworn to in your account.

5. Did you not make a conveyance by assignment dated June 10, 1887, to Richard Y. Cook, as trustee for your daughters, Sarah Long and Jane Nelson Bonbright, of a bond and mortgage bearing date June 22, 1882, to secure $150,000, given by M. Simpson McCullough to you, secured on certain property in Longport, N. J.? If so, state the consideration received for said assignment and what disposition you have made of said consideration. If you say same was a gift to your daughters, said Jarah Long and Jane
100 Nelson Bonbright, then give a statement of what you owned at time of said gift and also your liabilities at said time.

No. 6. Do you own real estate in the United States? And if you answer aye, state where the same is situated, the metes, bounds, and extent thereof, and in whose name is the title thereto and the incumbrances against same.

No. 7. Have you any rights or interests, alone or conjointly with others, either equitable or legal, in any real estate or any claim against any real estate or proceeds of real estate in the nature of a charge or lien upon the same, or by the way of remainder therein, or of equity of redemption, or as mortgagee, or as tenant for life of

years, or as lessor, or in any manner otherwise? If you answer aye to one, any, or all of these inquiries, state fully the nature and quantity of your rights, interests, or claims; the situation, metes, bounds, and extent of the said real estate, and in whose name is the title thereto; how your rights, interests, and claims are vested in or secured to you; what is your annual money return therefrom, and whether you are solely or one of two or more owners jointly.

No. 8. Where do you now reside? Have you any interest or right, legal or equitable, in and to the house and lot where you now reside? If aye, state the same fully and in detail.

101 No. 9. Are you in receipt of income? If you answer aye, state how the said income is derived to you, its amount per annum, the times at which and where it becomes payable, and what person or persons is or are liable to you for the same, as well as who directly pays over the same to you.

No. 10. Are you entitled to an annuity? If you answer aye, state the amount of, and when, where, and from what you receive the same.

No. 11. Do you own choses in action or personal property? If you answer aye, describe the same fully, state where the same now is, in whose custody or control, and what is the extent of your interest therein.

No. 12. Have you in your own right moneys which you have or which are placed out at interest or invested in stocks, bonds, loans, or evidences of indebtedness of any person or company, incorporated or otherwise, from which you are entitled to or may derive income or other return? If you answer aye, state what money you have, and describe the said stocks, bonds, loans, or evidence of indebtedness, with the names and residences of the persons liable to you on account of the same, the times when and the place where the income derived therefrom is payable, and what is the extent of the said income.

102 No. 13. Have you any goods, chattels, furniture, desks, tables, instruments, books, letters patents, pictures, maps, money, rights, credits, claims, property, stock in or claim upon or present right to money now or in the future from any person or persons or corporation, and choses in action other than such as you have described in answer to the foregoing interrogatories? If you answer aye, state what and where the same now are, and describe the same fully.

No. 14. Have you at any time within the past, within a year from this time or any time, assigned or conveyed any property, real or personal, to any one without valuable consideration? If you answer aye, state what was assigned, to whom the assignment was made, what the said property was, and where the same now is.

No. 15. Have you any money in possession of any person or any money on deposit, or any interest in any money on deposit in any bank, banker's banking institution, trust company, or savings fund, either in your own name or the name of any other person or persons? If you answer aye, state in whose hands the same is, the amount thereof, and in whose name same is.

No. 16. Did you not receive on November 3, 1897, from the Chestnut Street national bank their due bill for $2,444.32 and collect the same in cash? If so, have you still same or part
103 thereof in your possession? If you answer no, what disposition have you made of same?

No. 17. Did you not receive from Chestnut Street national bank between December, 1896, and last of April, 1897, 58 shares of stock of Eighth national bank, which had been deposited with them as collateral, and which they returned to you? If aye, state if you still own same. If you do not, state if you have sold same. If so, when and for what price and what disposition have you made of said proceeds? If you have not sold said stock, what disposition have you made of same?

Endorsement: No. 604, June term, 1897, common pleas No. 4. Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under will of Benjamin Milnes, deceased, *vs.* James Long. Bill for discovery in aid of execution, with interrogatories. Let *sci. fa.* issue, ret'ble 1st Monday Jan'y, 1898. Chas. Y. Audenried, judge. Alfred D. Wiler, Crawford, Loughlin & Dallas, attorneys for plaintiff. Filed Dec. 7, 1897. Jas. W. Fletcher, pro proth'y.

COMMONWEALTH *ex Rel.*
v.
JAMES LONG. } C. P. 4, June Term, 1897. No. 607.

Enter my appearance for Olive Long.

JOSEPH H. TOULANE.

Endorsement: 604, June T., 1897, C. P. 4. Commonwealth *v.* James Long. Appearance for Olive Long. Filed Dec. 27, 1897. J. Briggs, pro proth'y, per H. Toulane.

104 COMMONWEALTH OF PENNA., to Use, &c.,
vs.
LONG, Def't; CHESTNUT ST. NAT'L B'K, Garnishee. } C. P. No. 4, J., '97. 604.

Enter rule for judg't against Chestnut Street National Bank, garnishee, on its answers.

A. D. WILER.
CRAWFORD, LOUGHLIN & DALLAS.

To proth'y C. P.

Endorsement: C. P. 4. 604, June T., 1897. Commonwealth of Penna. *v.* Long, def't; Chestnut St. Nat'l B'k, garnishee. Rule for judg't against garnishee on answer. Filed Dec. 15, 1897. C. H. W., pro proth'y. A. D. Wiler, Crawford, Loughlin & Dallas.

In the Court of Common Pleas No. 4 of Philadelphia County, of June Term, 1897. In Equity.

THE COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustees for Mary Rodgers under the Will of Benjamin Milnes, Deceased, *vs.* JAMES LONG. } No. 604.

The Answer of James Long to the Bill of Complaint in the Above Case.

105 To the honorable the judges of said court:

I, the defendant, James Long, saving and reserving to myself all and all manner of exceptions to the manifold errors in the bill contained, for answer thereto or to such parts thereof as I am advised it is material and necessary for me to answer, say:

First. I admit the facts to be as alleged in the first, third, fourth, and eighth paragraphs of complainant's bill, and for further answer thereto I refer to my answers to the interrogatories in said bill, which said answers are hereto annexed.

Second. I admit the allegation in the second paragraph of plaintiff's bill, that his judgment, court of common pleas, No. 4, of June term, 1897, No. 604, was obtained on a bond bearing date September 14th, 1875, given by me for the faithful performance by John Milnes of his duties as trustee of the estate of Benjamin Milnes, deceased; but I deny that I made any arrangement with said Milnes or any of his children or with any person whatever to pay the defalcation of said John Milnes.

That an arrangement with the children of said Milnes was proposed and talked of, whereby they were to assign over certain interests which they had in their mother's estate in settlement
106 of their father's defalcation in order to protect their father from the consequences of said defalcation, but said arrangement was never acted on by reason of the death of said John Milnes and the refusal of his children to carry it out, and for further answer I refer to my answer to plaintiff's first interrogatory.

Third. That the facts set forth in fifth paragraph of plaintiff's bill are as alleged, but that the legacies referred to and for which credit was claimed in my account filed as executor of Thomas G. Duncan's estate, in the orphans' court, as of November, 1876, No. 144, were never in fact paid to my daughters, the legatees, in the sense of said legacies passing into the personal possession of my said daughters; that the payment intended and alleged consisted in the transfer of the amount of said legacies from my custody as executor to my custody as the agent, trustee, or representative of my said daughters, and I continued to hold the said legacies for and on account of my daughters and was indebted to them for the whole amount thereof, with interest, at the time the said mortgages were created.

Fourth. That I did assign a bond and mortgage given by M. Simpson McCullough to me to secure the sum of $150,000 on real estate in Longport, N. J.; that said assignment was made by me to
Richard Y. Cook, trustee for my daughters, Sarah Long and
107 Jane N. Bonbright, and for the consideration and under the circumstances set forth in my answer to plaintiff's fifth interrogatory annexed hereto.

Fifth. To the seventh paragraph of plaintiff's bill I answer that at the time I made the assignment of the said mortgage of M. Simpson McCullough for $150,000 to Richard Y. Cook in trust I was not aware that I was liable on the bond of John Milnes, having totally forgotten that I had ever executed said bond, and being, moreover, under the impression that the estate of Benjamin Milnes had been long before settled and distributed; and I further answer and say that I did not know and had no knowledge, information, or belief that John Milnes was insolvent; that I did at various times, as a matter of friendship, indorse some notes by way of accommodation to said John Milnes, but that I did so believing him amply able to take care of and protect the same, and that otherwise I certainly should not have made the indorsement. I am unable to state on knowledge, information, or belief whether said notes with my indorsements or any of them were outstanding and unpaid in 1887, when the assignment of said $150,000 mortgage was made; but I can and do answer that at that time I was possessed of property in my own right sufficient to pay all my liabilities, direct and contingent, including the claim on this bond, and to leave a surplus of
over $200,000; and for further answer he refers to his answer
108 to the plaintiff's fifth interrogatory.

Sixth. To the eighth paragraph of plaintiff's bill: I did assign the mortgage given by A. H. Phillips for $15,000 to the fire association March 19th, 1897, and that the consideration received therefor was the sum of $15,000, the face value of said mortgage, and that I paid the sum so received to Richard Y. Cook, trustee, on account of arrears of interest due him on two certain bonds and mortgages for $20,000 and $30,000 respectively, being the same referred to in third and fourth paragraphs of plaintiff's bill.

Also that on April 1st, 1897, he assigned to E. B. Smith & Co. twenty-nine shares capital stock of the Huntingdon and Broad Top Railroad Company to the order of E. B. Smith & Co.

Seventh. To the ninth and tenth paragraphs of plaintiff's bill I answer that I have never made any concealment, fraudulent or otherwise, of any of my property, real or personal, and that I have in my answers to the interrogatories to plaintiff's bill hereto annexed made a full disclosure of all my assets and liabilities, so far as I have knowledge, information, recollection, or belief as to the same.

And I pray to be hence dismissed with my reasonable costs incurred in the premises.

JAMES LONG.

And I, the said James Long, do answer the interrogatories
109 to said bill of complaint as follows:

1. To the first interrogatory I answer:

That the bond upon which plaintiff's judgment was obtained was given by me for the faithful performance by John Milnes of his duties as trustee of the estate of Benjamin Milnes, deceased, about the twenty-fourth day of September, 1875, as alleged; that I believed at the time said bond was given that said John Milnes was a man of large means, and I gave the matter little thought at the time and it had entirely passed from my recollection when said Milnes, about Feb'y last past, called upon me and in great distress stated that he was being called upon to account as trustee, as aforesaid, and that he had invested the funds in his own business and lost the same, and that he was totally insolvent.

That prior to this communication I had supposed that the Milne-estate had been settled and distributed, and that my responsibility was at an end many years before. I at once placed the matter in the hands of my counsel, White & White, who threatened proceedings against John Milnes, the defaulting trustee, and that soon after I was called upon by Percival Hill, a son-in-law of said Milnes, who stated that in order to protect their father from the consequences of his defalcation the children of John Milnes would assign over, in
settlement of the claim against him, their interest in their
110 mother's estate, which was about equal in amount to the aforesaid defalcation; that as the beneficiaries of the trust were members of said Milnes family, it was understood that this settlement would be entirely satisfactory and no payment by me in cash or otherwise was contemplated, agreed to, or spoken of by me, and no preparation was made by me to make such payment.

The said John Milnes died before any steps to carry out the proposed agreement had been taken, and his children then refused to carry out the arrangement, as stated in plaintiff's bill.

2. To the second interrogatory:

I did sell and assign the mortgage referred to in said interrogatory as therein stated. I received as the consideration for said sale and assignment the sum of $15,000, being the face of said mortgage, and I handed the same to Richard Y. Cook, trustee for my daughters, Sarah Long and Jane N. Bonbright, as a payment on account of arrears of interest due on two certain bonds and mortgages for $20,000 and $30,000 respectively, being the same referred to in plaintiff's fourth interrogatory.

3. To the third interrogatory:

That the $2,000 mortgage of Catharine Remington to M. Simpson McCullough, in this interrogatory referred to, was paid off several
years ago; that the amount thereof was received by me and
111 was mixed with my other funds, and that I am unable at this time to state specifically from knowledge, information, or belief how the money was used, further than that it was spent in the payment of debts and living expenses.

4. To the fourth interrogatory:

That I did execute the bonds and mortgages to Sarah Long in

said interrogatory referred to, and the consideration therefor was as therein stated.

That it appears by my account as executor of the estate of said Thomas G. Duncan that I claimed credit therein for payment to my daughters, Sarah Long and Jane N. Bonbright, as in the said interrogatory alleged.

That said payments were only constructively made at that time to my said daughters, and this by transferring the amounts thereof from my account as executor to my individual account for and on behalf of my said daughters. Said sums remained in my hands in trust for them, and no part of them was ever paid over to my said daughters, nor either of them, prior to the giving of the said bond and mortgage.

5. To the fifth interrogatory:

I did make an assignment, dated June 10th, 1887, to Richard Y. Cook, as trustee for my daughters, Sarah Long and Jane Nelson Bonbright, of a bond and mortgage given by M. Simpson McCullough, bearing date June 22d, 1882, for $150,000, secured on
112 property in Longport, N. J., and said assignment was made in consideration of the love and affection which I bore to my said daughters, and under the following circumstances:

I had, as a favor to one James Hunter, a lifelong friend, and without consideration of any kind, given his firm accommodation notes on which at the time of the failure of said firm I was liable to the amount of about $50,000, which I was obliged to pay.

In addition to this, I found that said Hunter had forged my name to over $300,000 of paper purporting to be made by me and payable to said Hunter's firm.

A number of suits were brought against me upon said forged paper; and although whenever called upon I was able to and did successfully defend said suits and established the fact that the paper was forged, I was nevertheless so impressed with the risk which I had run and with my own folly in placing so much confidence in one who proved so unworthy that I deemed it my duty, while amply able to do so, to make a provision for my children which could not be taken from them, and with this view I created the trust for their benefit.

The value of the Longport property was in a great degree speculative at that time, as it consisted of sea-beach land in course of development, and the mortgage was payable out of the pro-
113 ceeds of lots sold only. One hundred thousand dollars would have been a fair estimate for the value of the mortgage at the time of its assignment to Mr. Cook as trustee, and at the time of said assignment I had retired from business, and, to the best of my knowledge, information, and belief, I was worth, over and above all liabilities, at least $300,000.

My assets at that time, so far as I can now state them, were as follows:

Cash in bank	$7,119.27
Money in hands of James Long & Bro	46,500.00
Shares Eighth national bank, value	27,000.00

	Shares United Gas Company stock	16,000.00
	Shares Union Trust Company stock	12,600.00
	Real estate, Sea Girt, N. J.	10,900.00
	Real estate, Huntingdon and Broad Top	4,647.50
	Huntingdon and Broad Top bonds and stock	46,000.00
	Water right, Black Hills, S. D.	5,000.00
	Krotophone stock	30,000.00
	Mortgages on Longport property, New Jersey	23,100.00
	House on Longport property, New Jersey	30,000.00
	Real estate, George's hill, Philadelphia	115,000.00
	Glamorgan Iron Company stock	30,000.00
	Real estate, Richmond street, Philadelphia	4,600.00
	Continental Hotel Company stock	420.00
	Mill, Second and Oxford, Philadelphia	40,000.00
114	House No. 1529 Girard avenue, Philadelphia	15,000.00
	Stable and houses, Walker street, Philada	4,100.00
	Real estate, Florida, Brevard county	8,000.00
	Undivided interest in McCauley Mountain land, Pennsylvania	25,000.00
	Real estate in Virginia, Smyth county	100,000.00

My only liabilities beside that on plaintiff's bond at that time, to the best of my knowledge, information, and belief, were:

First. A primary liability on a certain bond and mortgage secured on property on George's hill, $69,000.

A secondary liability as accommodation indorser on certain promissory notes, amounting, I think, to about $200,000, made by the Glamorgan Iron Company and indorsed by the directors of said company for its accommodation. The other indorsers were Ario Pardee & Co., Wigton, Percival Roberts, all men of large means, and our liability as between ourselves was *pro rata*, my share being, to the best of my remembrance, knowledge, information, and belief, about $50,000 at the time of the making of said trust.

A bond and mortgage on dwelling-house No. 1529 Girard avenue for $4,700; due Eighth national bank for borrowed money, $28,000; due on accommodation notes given to J. & J. Hunter, $10,100.

115 6. To the sixth interrogatory:

I own no real estate the title to which is not in myself and of record, where the plaintiff can find all the information inquired of, and he is advised, believes, and submits that he is not called upon to make further answer to this interrogatory.

7. To the seventh interrogatory:

I have no rights alone or conjointly with others, either legal or equitable, in any real estate which is not in my own name and appearing of record, with the exception of a one-third interest in a tract of land in Venango county, standing, to the best of my knowledge and belief, in the name of George Burnham and Charles Baird. I have neither knowledge, information, nor belief which would enable me to more definitely locate said last-mentioned tract of land, and I have no title papers and no writing in relation to my title to the same. The land was sold at sheriff's sale and bought in

by said Burnham and Baird, and they promised verbally to give me one-third of the proceeds when it was sold, and my right depends on said promise.

I have no other claim, to the best of my remembrance, knowledge information, or belief, on any real estate in the nature of a charge or lien, or by way of remainder or equity of redemption, or
116 as mortgage, or as tenant for life or years, or as lessor or otherwise, save as above stated.

8. To the eighth interrogatory:

I reside at Bryn Mawr. I have no interest or right, legal or equitable, in or to the house or lot in which I reside, save as tenant.

9. To the ninth interrogatory:

I am not in receipt of any income nor entitled to any that I know of. Prior to the sale by the sheriff of my mill property at Second and Oxford some months ago I had a small income from it, but since that sale was made I am totally without income or means of support.

10. To the tenth interrogatory:

I am not entitled to any annuity.

11. To the eleventh interrogatory:

I own no choses in action or personal property save my wearing apparel and a few personal articles, not exceeding in all $300 in value.

12. To the twelfth interrogatory:

I have no moneys at interest or invested in stocks, bonds, loans, or evidences of indebtedness of any person or company, incorporated or otherwise.

117 13. To the thirteenth interrogatory:

I have no goods, chattels, furniture, desks, tables, instruments, books, letters patent, pictures, maps, money rights, credits, claims, property, stock in or claim upon or present right to money, now or in the future, from any person or persons or corporation, or choses in action other than those above described in answer to eleventh interrogatory.

14. To the fourteenth interrogatory:

I have not within the last year assigned or conveyed any property, real or personal, to any one without valuable consideration.

15. To the fifteenth interrogatory:

I have no money in possession or on deposit, nor any interest in any money on deposit in any bank, bankers, banking institution, trust company, or saving fund in my own name or in the name of any other person or persons.

16. To the sixteenth interrogatory:

I did receive on November 3d, 1897, from the Chestnut Street national bank their due bill for $2,444.32 and collected the same in cash. I have no part of said sum now in my possession.

I have spent the whole of it, partly for living expenses;
118 $576.95 of it for rent due by me and $910.58 for interest due upon a bond and mortgage on my Virginia property held by the estate of Ario Pardee.

17. To the seventeenth interrogatory:

I did receive from the Chestnut Street national bank between December, 1896, and April, 1897, forty-eight shares of the capital stock of the Eighth national bank, which had been deposited with them as collateral for money loaned to me. I do not own any of said stock now. I sold it through Barnes & Loffland for between $263 and $264 per share, and I paid the proceeds to the said Chestnut Street national bank on account of my then indebtedness to them. The bank gave it to me on my request and on my assurance that I would hand them the proceeds, which I did, according to promise.

JAS. LONG.

James Long, being duly affirmed according to law, deposes and says that the allegations of the foregoing answers to the said bill of complaint and to the interrogatories thereto, so far as they are stated as of his own knowledge, are true, and so far as stated upon information and belief he believes them to be true.

JAS. LONG.

Affirmed and subscribed to before me this 29th day of January, A. D. 1898.

[SEAL.] F. EARLE VON LEER,
Notary Public.

119 Endorsement: No. 604, June term, 1897, common pleas, No. 4. Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title, Insurance and Trust Company, trustees for Mary Rogers under will of Benjamin Milnes, deceased, *vs.* James Long. Answer of James Long to bill of discovery and to interrogatories. Richard P. White, Thomas E. White, attorneys for defendant. Filed Jan. 31, 1898. J. Briggs, pro proth'y.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion, etc., to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased,
vs.
JAMES LONG, Defendant, and THE CHESTNUT Street National Bank, Garnishee, *et al.*

C. P., 4, June Term, 1897. No. 604.

Order for Appearance.

The prothonotary will please enter our appearance for George H. Earle, Jr., receiver of the Chestnut Street National Bank of Philadelphia, Pennsylvania, garnishee.

W. H. ADDICKS,
ASA W. WATERS,
Attorneys for Receiver of Chestnut Street National Bank.

To M. Russell Thayer, Esq., prothonotary C. C. P.

120 Endorsement: C. P., 4, June, 1897. 604. Commonwealth of Pennsylvania, &c., the Commonwealth Title Insurance & Trust Co., &c., *vs.* James Long, defendant, and The Chestnut Street National Bank, garnishee. Order for appearance. Filed May 5, 1898. P. White, pro proth'y. W. H. Addicks, Asa W. Waters, att'ys for receiver Chestnut St. nat'l bk.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion, etc., to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased,
vs.
JAMES LONG, Defendant, and THE CHESTNUT Street National Bank, Garnishee, *et al.*
C. P., 4, June Term, 1897. No. 604.

Suggestion of Record.

Now, to wit, this 5th day of May, 1898, it is suggested of record that George H. Earle, Jr., has been duly appointed by the Comptroller of the Currency of the United States and qualified as receiver for The Chestnut Street National Bank of Philadelphia, Pennsylvania, garnishee.

W. H. ADDICKS,
ASA W. WATERS,
Attorneys for the Receiver of the Chestnut Street National Bank.

121 Endorsement: No. 604, J. term, 1897, C. P., 4. The Commonwealth of Pennsylvania, &c., the Commonwealth Title Insurance and Trust Co., etc., *vs.* James Long, defendant, and The Chestnut Street National Bank, garnishee. Suggestion of record. Filed May 5, 1898. P. White, pro proth'y. W. H. Addicks, Asa W. Waters, attorneys for receiver of Chestnut St. national bank.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion, etc., to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased,
vs.
JAMES LONG, Defendant, and THE CHESTNUT Street National Bank, Garnishee, *et al.*
C. P., 4, June Term, 1897. No. 604.

And now, May 2nd, 1898, The Chestnut Street National Bank of Philadelphia, Pennsylvania, by its receiver, George H. Earle, Jr., moves the court to vacate and dismiss the attachment herein against the said Chestnut Street National Bank, garnishee, and in support of said motion files the following reason :

The said court has not jurisdiction in such an action under section 5242 of the Revised Statutes of the United States.

W. H. ADDICKS,
ASA W. WATERS,
Attorneys for the Receiver of The Chestnut Street National Bank, Gar.

122 Endorsement: 604, J., 1897, C. P., 4. Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, *vs.* James Long, defendant, and The Chestnut Street National Bank, garnishee, *et al.* Motion to vacate and dismiss attachment. Filed May 7, 1898. C. H. W. W. H. Addicks, Asa W. Waters, attorneys for the receiver of the Chestnut Street national bank.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased, *vs.* JAMES LONG, Defendant, and THE CHESTNUT Street National Bank, Garnishee, *et al.*	C. P., 4, June Term, 1897. No. 604.

Affidavit.

COMMONWEALTH OF PENNSYLVANIA, } ss:
City and County of Philadelphia, }

Before me, the subscriber, a notary public in and for the county and State, personally appeared George H. Earle, Jr., who, being duly affirmed, deposes and says that prior to December 23rd, 1897,

123 The Chestnut Street National Bank of Philadelphia, Pennsylvania, garnishee in the above-entitled action, was duly incorporated and organized under the laws of the United States, and was transacting a banking business, and that on or about the said date it suspended payment of its obligations and become insolvent, and was so declared by the Comptroller of the Curreney of the United States.

That thereafter, to wit, on or about the 29th day of January, 1898, this affiant was duly appointed by the Comptroller of the Currency of the United States, under the laws of the United States, receiver for the said Chestnut Street national bank, and as such, under the direction of the said Comptroller of the Currency, took and now holds possession of the books, records, and assets of every description of said banking association, and is now administering the duties of such trust.

GEORGE H. EARLE, JR.

Affirmed and subscribed before me this 5th day of May, A. D. 1898.

H. G. HART,
Notary Public.

[SEAL.]

Endorsement: No. 604, June, 1897, C. P., No. 4. Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Co., trustee, &c., *vs.* James Long, defendant, and Chestnut Street National Bank, garnishee. Affidavit of George H. Earle, Jr. Filed May 6, 1898. P. H. White, pro proth'y. W. H. Addicks, Asa W. Waters, att'ys for receiver of Chestnut St. nat'l bk.

124 Court of Common Pleas No. 4 of Philadelphia County, June Term, 1897.

THE COMMONWEALTH OF PENNSYLVANIA, to the Use of, etc.,
vs.
JAMES LONG, Defendant, and THE CHESTNUT STREET National Bank, Garnishee. } No. 604.

And now, to wit, May 21st, 1898, upon the hearing of the attachment in the above case and the interrogatories of the plaintiff and the answer of the garnishee thereto, it is adjudged that the above-named garnishee has a deposit in money belonging to the above-named defendant of $2,900, with interest from October 28th, 1897; and also that the said garnishee has 77 shares of "National Gas Trust stock" and 33 shares of the capital stock of the Eighth National Bank of Philadelphia belonging to the said defendant and pledged by him with the said garnishee for payment by him to it of the sum of $17,831, with interest thereon from April 22nd, 1897, and that the plaintiff have execution of any dividends on the said deposit of $2,900, with interest, in common with the other creditors of said garnishee, less $35.00, counsel fee for the said garnishee's counsel, and that if the said garnishee refuse or neglect, on demand by the sheriff, to pay the same, then the same to be levied of the said garnishee according to law, as in the case of a judgment
125 against it for its proper debt, and also that the plaintiff have leave to issue a writ of *fieri facias* against the above-named defendant for the sale of the said 77 shares of "National Gas Trust stock" and 33 shares of the capital stock of the Eighth National Bank of Philadelphia, pledged by the defendant with the garnishee, subject to the garnishee's claim under said pledge of the sum of $17,831, with interest thereon from April 22nd, 1897, or so much thereof as shall be necessary to satisfy the plaintiff's judgment against the defendant in this case, with costs.

By the court:

M. ARNOLD, *P. J.*

Endorsement: 604, June T., 1897, C. P., No. 4. Com'th, to use, &c., *v.* Long, def't, and The Chestnut St. Bk., garnishee. Order and judg't. Finding ag'st The Chestnut St. Nat'l Bk., garnishee. Filed May 21, 1898. C. H. White, pro proth'y.

COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the will of Benjamin Milnes, Deceased,

vs.

JAMES LONG, Defendant, and the CHESTNUT Street National Bank, Garnishee, *et al.*

C. P., No. 4, June Term, 1897. No. 604.

126 *Rule to Vacate and Dismiss Attachment Surjudgment.*

ARNOLD, *P. J.:*

Judgment was entered against the defendant, James Long, on September 29, 1897, for $31,499, and on October 5, 1897, an attachment surjudgment was issued and served on the Chestnut Street national bank as garnishee.

To interrogatories the bank answered that Long was indebted to it in the sum of $17,831, with interest from April 22, 1897; that on September 20, 1897, it issued a due bill for $2,900, payable only through the clearing-house the day after issue, and delivered same to Long, he having closed his account with the bank. The due bill was not paid through the clearing-house, but on November 3, 1897, which was nearly a month after the service of the attachment, Long surrendered the due bill to the bank to pay interest due on his indebtedness above mentioned, which interest was deducted, and the bank issued a new certificate, dated November 3, 1897, for $2,444.33, and delivered it to Long. This due bill was passed through the clearing-house and paid. The bank answered further that when the writ of attachment was served it held, as collateral security for the indebtedness to it, 77 shares of the stock of the National Gas trust, of the value of $160 per share, and 33 shares of the capital stock of the Eighth national bank, of the value of $264 per share.

The Chestnut Street national bank failed on December 23,
127 1897, and is now in the hands of a receiver, who has entered a rule to vacate and dismiss the attachment against that bank for want of jurisdiction in this court. In support of the rule the receiver relies upon section 5242 of the Revised Statutes of the United States, which is as follows:

All transfers of the notes, bonds, bills of exchange, or other evidences of debt, owing to any national banking association or of deposits to its credit all assignments of mortgages securities on real estate, or of judgments, or decrees in its favor; all deposits of money bullion or other valuable thing for its use or for the use of any of its shareholders or creditors; and all payments of money,

to either made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one paper to another, except in payment of its circulating notes, shall be utterly null and void. No attachment injunction or execution shall be issued against such association or its property before final judgment in any suit, action, or proceeding in any State, county or municipal court.

Were this attachment issued against the bank for a debt due by it, then the claim of the receiver to exemption from such
128 attachment would be valid; but it is not for an indebteness of the bank that an attachment was served on it. The attachment is for an indebtedness by Long, and the purpose of the attachment is not to obtain a judgment for a debt due by the bank, but to inquire and determine whether it has any money or property of Long which is subject to an execution at the suit of his creditors. The purpose of the statute is to prevent one creditor of an insolvent national bank from obtaining a priority over others, and to preserve an equality between its creditors in the distribution of its assets. Therefore it is enacted that no attachment, injunction, or execution shall issue against such association or its property before judgment, such, for instance, as a foreign attachment for a debt due by it. The statute does not prevent suits against a national bank in State courts. All it means is that no liens shall be acquired before judgment by attachment, injunction, or execution before judgment. After judgment an execution may be issued against a national bank the same as against any other defendant. But this is not a suit against the bank. It is a suit now in judgment against Long, and the attachment is an execution against him, with a clause of *scire facias* to warn the bank to show cause why judgment should not be levied of Long's property in the possession of the bank. The bank admits that when the attachment was served it owed Long $2,900 on a clearing-house due bill, which was not paid in the usual
129 course of such due bills; that Long presented the bill to the bank on November 3, 1897, and the bank paid it by giving Long credit for interest due by him and giving him a new bill. This was a month after the attachment had been served upon the bank. The bank had no right to deal with Long as it did. The plaintiff was entitled to that money and to a finding to that effect. Likewise the plaintiff is entitled to a finding that the bank holds the above-mentioned shares of stock subject to its lien for the indebtedness of Long to it, and the plaintiff is entitled to execution against that stock subject to the lien of the bank.

As to the money, we incline to think that as the bank is now insolvent, the plaintiff can recover no more than a dividend, and is not entitled to any priority over the other creditors of the bank. As to the stock, the plaintiff is entitled to a *fi. fa.* to sell that subject to the claim of the bank.

The foregoing reasoning has the support of a decision of the court of appeals of New York, which held that sec. 5242 of the Revised Statutes of the United States does not prohibit the issue of an attach-

ment, injunction, or execution against an insolvent national bank for property of a third person in the custody of the bank.
130 Corn Exchange Bank *v.* Blye, 101 N. Y., 303.
Rule discharged.

ASA W. WATERS, *For Rule.*
A. D. WILER,
GEORGE L. CRAWFORD, *Contra.*

Endorsement: No. 604, June T., 1897, C. P., No. 4. Comm., to use, *v.* Chestnut Street Nat'l Bank. Opinion by Arnold, P. J. Filed May 21, 1898. C. H. W., pro proth'y.

131 COMMONWEALTH OF PENNSYLVANIA, to the Use, &c., *vs.* JAMES LONG, Defendant, and CHESTNUT Street National Bank, Garnishee. } C. P., No. 4, June Term, 1897. No. 604.

Issue *fi. fa.* to sell the right, title, and interest of defendant, James Long, in 77 shares National Gas Trust stock and 33 shares capital stock of Eighth national bank, subject to claim of Chestnut Street National Bank, garnishee, of $17,831, with interest thereon.

A. D. WILER.
CRAWFORD, LOUGHLIN & DALLAS.

To proth'y of C. P.

Endorsement: C. P., No. 4, 604, June T., 1897. Commonwealth of Pa., &c., *v.* James Long, d'f't; Chestnut St. Nat'l Bk., gar. Præcipe for *fi. fa.* to sell interest of James Long, def't, in stock in hands of garnishees. Filed May 27, 1898. Hunter, pro proth'y. A. D. Wiler, Crawford, Loughlin & Dallas.

EASTERN DISTRICT OF PENNSYLVANIA, *City and County of Philadelphia,* } *ss:*

[SEAL.] The Commonwealth of Pennsylvania to the justices of the court of common pleas, No. 4, for the county of Philadelphia, Greeting:

We, being willing for certain causes to be certified of the
132 matter of the appeal of The Chestnut Street National Bank, garnishee, and George H. Earle, Jr., receiver of Chestnut Street national bank, from judgment of said court against The Chestnut Street National Bank, garnishee, in a certain action in said court of June term, 1897, No. 604, wherein The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under will of Benj. Milnes, dec'd, is plaintiff and James Long, defendant, and The Chestnut Street National Bank, garnishee, and George H. Earle, Jr., receiver of the Chestnut Street national bank, are garnishees, before you or some of you depending, do command you that the record and proceedings aforesaid, with all things touching

the same, before the justices of our supreme court of Pennsylvania, at a supreme court to be holden at Philadelphia, in and for the eastern district, the first Monday of January next, so full and entire as in our court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable James P. Sterrett, doctor of laws, chief justice of our said supreme court, at Philadelphia, the fourth day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

CHAS. S. GREENE,
Prothonotary.

133 Endorsement.

To the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the eastern district:

The record and process and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.

M. ARNOLD. [L. S.]
CHAS. Y. AUDENRIED. [L. S.]

Endorsement: C. P., No. 4, 604, June term, 1897. No. 222, January term, 1898, supreme court. The Commonwealth of Penna., at the suggestion of the Commonwealth Title, etc., trustees, *vs.* James Long, defendant, and The Chestnut St. Nat. Bk., trustee. Certiorari to the court of common pleas, No. 4, for the county of Philadelphia, returnable the first Monday of January, 1899. Rule on the appellee to appear and plead on the return day of the writ. June 4, 1898, bro't into office. C. B. W. Filed Jun- 28, 1898, in supreme court. Asa W. Waters. W. H. Addicks.

134 In the Supreme Court of Pennsylvania, Sitting at Philadelphia, January Term, 1898.

THE COMMONWEALTH OF PENNSYLVANIA, at the Suggestion and to the Use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the Will of Benjamin Milnes, Deceased, Appellee,

vs.

JAMES LONG, Defendant, and THE CHESTNUT STREET National Bank and George H. Earle, Jr., as Receiver of the Chestnut Street National Bank, Garnishees, Appellants.

No. 222.

Assignments of Error upon Behalf of Appellants.

The appellant George H. Earle, Jr., as receiver of the Chestnut Street national bank, and upon behalf of said bank, against which the writ of attachment surjudgment was issued (in manner and form as set forth) and served in the proceedings before the learned court

below, assigns as an error of that court its judgment and findings against The Chestnut Street National Bank, entered May 21st, 1898, in which it made absolute the rule of plaintiff filed December 15th, 1897, for judgment upon the answers of The Chestnut Street National Bank, garnishee, and in which it discharged the rule (motion)
135 filed May 7th, 1898, of George H. Earle, Jr., as receiver, and upon behalf of said The Chestnut Street National Bank, "to vacate and dismiss the attachment" against said The Chestnut Street National Bank, for the reason that said learned court below had not jurisdiction of the remedy by attachment against said national bank or any national banking association under section 5242 of the Revised Statutes of the United States then in full force and effect.

ASA W. WATERS,
WILLIAM H. ADDICKS,
Attorneys for Appellants.

Endorsement: No. 222, January term, 1898, in the supreme court of Pennsylvania, sitting at Philadelphia. The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title, Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, appellee, *vs.* James Long, defendant, and The Chestnut Street National Bank and George H. Earle, Jr., as receiver of the Chestnut Street National Bank, garnishees, appellants. Filed Jan. 2, 1899, in supreme court. Assignments of error upon behalf of appellants. Asa W. Waters, W. H. Addicks, attorneys for appellants.

COMMONWEALTH, to Use, &c., *v.* CHESTNUT STREET NAT'L BANK *et al.*, Ap'ts. } C. P., No. 4, Philadelphia, No. 222, Jan. Term, 1898.

Filed Jan. 30, 1899.

Per curiam:

The judgment is affirmed on the opinion of the learned
136 president of the court below.

STATE OF PENNSYLVANIA, *Eastern District,* } *ss:*

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania in and for the eastern district, do hereby certify that the above and foregoing is a true copy of the opinion in the above-entitled cause so full and entire as appears of record in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Philadelphia, this 9th day of February, A. D. 1899.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

137 UNITED STATES OF AMERICA, } ss:
State of Pennsylvania, }

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania, eastern district, do hereby certify that the foregoing record, pages 1 to 136, inclusive, is a true and faithful copy of the proceedings of the supreme court of the State of Pennsylvania, eastern district, in a certain suit therein pending, wherein The Chestnut Street National Bank, garnishee, and George H. Earle, Jr., receiver of the Chestnut Street national bank, were appellants and The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, trustees for Mary Rodgers under the will of Benjamin Milnes, deceased, were appellees.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said supreme court of the State of Pennsylvania, eastern district, at Philadelphia, the 9th day of February, 1899, and in the one hundred and twenty-third year of the Independence of the United States.

Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.

CHAS. S. GREENE,
Prothonotary of the Supreme Court of Pennsylvania, Eastern District.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

138 I, James P. Sterrett, chief justice of the supreme court of Pennsylvania, do hereby certify that Charles S. Greene was at the time of signing the annexed attestation and now is prothonotary of the said supreme court of Pennsylvania in and for the eastern district, to whose acts as such full faith and credit are and ought to be given, and that the said attestation is in due form.

In witness whereof I have hereunto subscribed my name this ninth day of February, one thousand eight hundred and ninety-nine.

JAMES P. STERRETT,
Chief Justice Supreme Court, &c.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania in and for the eastern district, do certify that the Honorable James P. Sterrett, by whom the foregoing certificate was made and given, was at the time of making and giving the same and is now chief justice of the supreme court of Pennsylvania, to whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, and that his signature thereto subscribed is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme court of Pennsylvania in and for the

eastern district, at Philadelphia, this ninth day of February, one thousand eight hundred and ninety-nine.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

139 UNITED STATES OF AMERICA, *ss*:

To the Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title, Insurance and Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Pennsylvania, wherein George H. Earle, Jr., receiver of the Chestnut Street national bank, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United Sates, this 8th day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

Service of above citation on February 9, 1899, is admitted and accepted.

ALFRED D. WILER,
Att'y for Commonwealth of Pennsylvania, to Use, &c.

Endorsed on cover: File No., 17,306. Pennsylvania supreme court. Term No., 218. George H. Earle, Jr., receiver of the Chestnut Street national bank, plaintiff in error, *vs.* The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title, Insurance & Trust Company, trustee for Mary Rodgers under the will of Benjamin Milnes, deceased. Filed February 20th, 1899.

No. 218.

IN THE

DEC 21 1899
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

Brief of Waters for P. E.

Filed Dec. 21, 1899.

George H. Earle, Jr., Receiver of the Chestnut Street National Bank, of Phiiadelphia, Pennsylvania, Plaintiff in Error,

vs.

The Commonwealth of Pennsylvania, at the Suggestion and to the Use of The Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the will of Benjamin Milnes, deceased, Defendant in Error.

ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

BRIEF OF PLAINTIFF IN ERROR.

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ASA W. WATERS,
W. H. ADDICKS,
Attorneys for Plaintiff in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1899. No. 218.

GEORGE H. EARLE, JR., RECEIVER OF THE CHESTNUT STREET NATIONAL BANK, OF PHILADELPHIA, PENNA., PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA, AT THE SUGGESTION AND TO THE USE OF THE COMMONWEALTH TITLE INSURANCE AND TRUST COMPANY, TRUSTEE FOR MARY RODGERS UNDER THE WILL OF BENJAMIN MILNES, DECEASED, DEFENDANT IN ERROR.

ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

BRIEF OF PLAINTIFF IN ERROR.

I. A STATEMENT OF THE CASE.

The Chestnut Street National Bank of Philadelphia, Pa. failed on December 23d, 1897, and the Comptroller of the Currency of the United States, satisfied of its insolvency, appointed George H. Earle, Jr., Receiver on January 29th, 1898, who immediately qualified and took possession of all its assets and ever since has been in possession thereof, and is administering the duties of his trust, under direction of said Comptroller. Section 5234, United States Revised Statutes. (Transcript, page 65.) The Receiver found attachment proceedings pending against the bank in the Court of Common Pleas, No. 4, of Philadelphia County (No. 604, June Term, 1897), a court of the State of Pennsylvania.

The Commonwealth of Pennsylvania at the suggestion and to the use of the Commonwealth Title, Insurance and Trust Company, trustee for Mary Rodgers, under the will of Benjamin Milnes, deceased, defendant in error in this court, is plaintiff in said State court, and sued one James Long, in an action in *assumpsit* on an executor's bond upon which he was surety, summons issuing on July 24th, 1897. (Transcript, page 13.) On September 29th, 1897, judgment was entered against James Long for $31,499. (Transcript, page 20.) At once the plaintiff in the State court (defendant in error) issued writs of *fieri facias* and attachment *sur* judgment (or attachment execution), the latter a remedial process provided for by the statutory laws of Pennsylvania, summoning by name as garnishees the Union Trust Company, the Merchants' National Bank, the Girard National Bank, the Eighth National Bank, the Fourth Street National Bank, the Huntingdon and Broad Top Mountain Railroad and Coal Company, the Niagara Mining and Smelting Company, and James Long, Brother & Co. (Transcript, pages 21 to 24, inclusive), and an alias writ of attachment *sur* judgment on October 5th, 1897, summoning by name as garnishee M. Simpson McCullough

"and all other persons in whose hands or possession
"the said goods and chattels, stocks, moneys, interest,

"and debts or any of them may be attached as gar-
"nishees, that they be and appear before our said court
"at Philadelphia, on the first Monday of November
"next, to show, if anything they, the said defend-
"ant, or the said garnishees have to say, why the
"said garnishee, besides costs of suits, should not be
"levied of the effects of the said defendant in the
"hands of said garnishees and have you then and there
"this writ.

"Witness the Honorable Michael Arnold, president
"judge of our said court at Philadelphia, the fifth day
"of October, A. D. 1897.

"J. U. G. HUNTER,
"Pro Proth'y."

(Transcript, pages 27, 28.)

Both writs of attachment *sur* judgment were served by the Sheriff of Philadelphia County in the State of Pennsylvania upon all parties named, and return made to said State court "Attached as within commanded and made "known to garnishee," &c., and the last-named alias writ, although not naming the Chestnut Street National Bank, was served upon it and the following return made to said Court of Common Pleas by the Sheriff, to wit:—

"Attached as within commanded and made known
"to garnishees as follows, viz., M. Simpson McCul-
"lough, by giving to him Oct. 6, 1897, at 9 o'clock
"A. M. a true and attested copy of the within writ
"and making known to him the contents thereof and
"Chestnut Street National Bank, by giving Oct. 28,
"1897, at 11 o'clock and 35 minutes A. M. a like
"copy to William Steele, Cashier of said Bank and
"making known to him the contents thereof and *nihil*
"habet as to James Long, deft.

"So answers

"JOHN J. CURLEY,
"Deputy Sheriff.

"ALEXANDER CROW, JR.,
"Sheriff."

(Transcript, page 28.)

Interrogatories were filed propounded by said plaintiff in said State court (defendant in error) to each of the foregoing garnishees so summoned in said action, as provided for by the statutory laws of Pennsylvania in attachment proceedings, and all entered appearance as defendants (garnishees) to such attachment proceedings, including said The Chestnut Street National Bank, and all answered practically to such interrogatories and attachment proceedings *nulla bona,* except the Chestnut Street National Bank. (Transcript, pages 29 to 45.)

On November 6th, 1897, pursuant to the practice and law of said State of Pennsylvania, interrogatories were filed in such attachment proceedings and served upon said Chestnut Street National Bank, together with a rule in words as follows, viz.:—

> "*To the garnishee above named (meaning the Chestnut Street National Bank), or attorney:*
>
> "Please take notice that interrogatories of which "the foregoing is a copy, have been filed in the above "stated case, and that a rule has been entered upon "the garnishee in the said case to answer the same "within twenty days, or judgment *sec. reg.*
>
> "Yours respectfully,
>
> "A. D. WILER.
>
> "CRAWFORD, LOUGHLIN & DALLAS,
>
> "*Attorneys for Plaintiff.*"

(Transcript, pages 45, 46.)

On November 24th, 1897, the answers of the Chestnut Street National Bank to the interrogatories were filed, and without here quoting in full we give a brief statement thereof.

(Transcript, pages 47 to 50.)

1. On October 28th, 1897, Long owed the bank $17,831 and interest from April 22d, 1897, and the bank "held "as collateral security for the indebtedness" seventy-seven shares National Gas Trust stock of then value of $160 per share, and thirty-three shares Eighth National Bank stock

of then value of $264 per share. Long had been a debtor to the bank for many years, and it will, we think, be judicially noticed by the court, that the expression "held "as collateral security for indebtedness," as used in this answer, in reference to these shares, means (as is the truth), that the shares of stock stood upon the books of the Eighth National Bank and of the National Gas Trust in the name of James Long, but when pledged to the Chestnut Street National Bank by him as collateral to his loan, were accompanied by assignments in blank and a blank power of attorney duly executed by said Long, so that a transfer on the books of either company of the respective shares so held as collateral could at any time have been made from Long to itself, or its assigns, by said Chestnut Street National Bank.

2. Prior to the service of the writ of attachment upon the Chestnut Street National Bank on October 28th, 1897, to wit, on September 20th, 1897, the said bank issued a Clearing House due bill, No. 20,968 (Transcript, page 48), payable to bearer, and as stated on its face, "payable "only in the exchanges through the Clearing House the "day after issue" at the request of Long for the balance to his credit, $2900, and the same was handed to him, and his account with the bank balanced and closed. Long, instead of the next day collecting the amount in cash "through the Clearing House" held the bill until November 3d, 1897, when he presented it to the cashier of the bank in person, and requested that the interest on his indebtedness to the bank be paid out of it, and a new Clearing House due bill given to him for the difference, which was done and the due bill for $2900 was surrendered by Long to the bank, $455.68, credited on Long's note for interest, deducted and a new due bill (No. 21,231) issued, payable to bearer as before and the same handed to Long for $2,444.32. (Transcript, page 48.) This was done six days after the service on the bank of the writ of attachment from said State court. This second due bill for $2,444.32 was duly presented to the bank through the Clearing House and paid in cash. On December 7th, 1897, plaintiff in State court (defendant in error) filed a

bill of discovery with interrogatories in the action, and a writ of *scire facias* was served upon Long, who filed his answer January 31st, 1898. (Transcript, pages 50 to 63, inclusive.)

On December 15th, 1897, plaintiff in said State court (defendant in error) filed a rule for judgment against the Chestnut Street National Bank, garnishee, on its answers to interrogatories in the attachment proceedings (Transcript, page 56), and this rule was pending when George H. Earle, Jr., entered his appearance in said State court action (Transcript, pages 63, 64), and caused it to be suggested of record that he had been duly appointed and qualified as Receiver of said bank under the laws of the United States (Transcript, page 64), and filed a motion (rule) to vacate and dismiss the attachment against said bank, for the reason that said court has not jurisdiction in such an action under section 5242 of the Revised Statutes of the United States (Transcript, pages 64, 65), and in support thereof filed an affidavit setting forth that as such Receiver, under direction of the Comptroller of the Currency of the United States, he had taken and was then in possession of the "books, records, and assets of "every description of said banking association, and is now "administering the duties of such trust." (Transcript, pages 65, 66.) The foregoing proceedings upon the part of the Receiver of the Chestnut Street National Bank (plaintiff in error) in the action in said State court, were had on May 5th, 6th, and 7th, 1898. The rule of said Receiver to vacate and dismiss the attachment proceedings was filed May 7th, 1898.

The said court heard argument upon the rule filed by plaintiff in said State court action (defendant in error) on December 15th, 1897, for judgment against the Chestnut Street National Bank, garnishee, upon its answers to interrogatories and the rule of the Receiver of the bank, filed May 7th, 1898, to vacate and dismiss the attachment proceedings for want of jurisdiction of the court, under section 5242 of the Revised Statutes of the United States together, and on May 21st, 1898, filed its findings in the case in writing. (Transcript, pages 66,

67.) The rule of December 15th, 1897, for judgment was made absolute, and the rule of May 7th, 1898, to vacate and dismiss the attachment was discharged and judgment was entered against plaintiff in error. (Transcript, pages 66, 67.)

The State court on the same day filed an opinion in the case (Transcript, pages 67, 68, 69), and on the same day, May 21st, 1898, plaintiff in said State court action (defendant in error) caused to be issued a writ of *fieri facias* (execution) upon the judgment against the plaintiff in error. (Transcript, page 69). Thereupon the Receiver of said bank (plaintiff in error), by direction of the Comptroller of the Currency, appealed from the judgment of said Court of Common Pleas to the Supreme Court of Pennsylvania, Sitting in and for the Eastern District, at Philadelphia, and the cause was certified upon appeal to said Supreme Court on June 4th, 1898 (Transcript, pages 69, 70), and on January 2d, 1899, assignments of error were filed in said Supreme Court of Pennsylvania, alleging want of jurisdiction for the reasons aforesaid. (Transcript, pages 70, 71.)

The case came on to be heard in the said Supreme Court of Pennsylvania, and on January 30th, 1899, the judgment of said Common Pleas Court was affirmed and so entered upon the records of the court, and there was filed on the same day an opinion in the case as follows:—

"SUPREME COURT OF PENNSYLVANIA.

Commonwealth, to use, &c., vs. *Chestnut Street National Bank* et al., *Appellants.*	January Term, 1898. No. 222.

"FILED January 30th, 1899.

"*Per Curiam;*—The judgment is affirmed on the opin-"ion of the learned president of the court below."

The case is reported in 189 Pa. St., page 606.

From this final judgment of the Supreme Court of Pennsylvania the case comes into this court upon writ of error, caused to be issued by the Receiver of said bank (plaintiff in error), by direction of the Comptroller of the Currency of the United States. (Transcript, pages 1 to 12, inclusive, and pages 71, 72, 73.) The only questions raised in the case are as to the jurisdiction of the Court of Common Pleas of Philadelphia County, Pennsylvania, a court of that State, to attach the Chestnut Street National Bank and George H. Earle, Jr., its Receiver (an officer of the United States, acting as such by authority of the laws of the United States), particularly relying upon that portion of section 5242, United States Revised Statutes, which says:—

> "No attachment, injunction, or execution shall be "issued against such association or its property be- "fore final judgment in any suit, action, or proceed- "ing in any State, county, or municipal court."

Questions Involved and the Manner in which they are Raised.

1. The State court had jurisdiction of Long, acquired by service of its writ of summons in *assumpsit*. The judgment against Long is valid, and upon it the State court had jurisdiction of any other garnishee than a National bank by issuance and service (as in the case at bar) of a writ of *attachment* sur *judgment* returnable to it, but the issuing and serving of such a writ against a National banking association (as was done here) or its property is powerless, utterly null and void, and confers no jurisdiction because Congress—the supreme law-making power of the land as to National banks—has deemed it prudent to exempt them and their property from all *mesne* process by *attachment, injunction, or execution*, and has forbidden "any State, county or munic- "ipal court" from issuing such *mesne* process "in any "suit, action, or proceeding." (*a.*) It is immaterial whether the legislation of Congress upon this subject be

regarded as wise or otherwise, its power to so legislate is unquestioned, and this court has already construed this United States Statute (section 5242) now under consideration, as we understand it, in favor of our contention in *Pacific National Bank* vs. *Mixter*, 124 U. S., 721. (*b.*) In our brief of the argument we will undertake more fully to present reasons for differing from the views of the defendant in error and the lower State court as expressed in its filed opinion, and will now in the statement of the case only say, that as nearly as we understand the points made against our contention, they are as follows: That while it is conceded that proceedings "such, for "instance, as a foreign attachment for a debt due by it" (meaning the bank), are prohibited by the United States Statute (section 5242), or, again using the language of the learned court below, "Were this attachment issued "against the bank for a debt due by it, then the claim "of the Receiver to exemption from such attachment "would be valid; but it is not for an indebtedness of the "bank that an attachment was served on it. The at-"tachment is for an indebtedness by Long, and the pur-"pose of the attachment is not to obtain a judgment for "a debt due by the bank, but to inquire and determine "whether it has any money or property of Long which "is subject to an execution at the suit of his creditors." (Transcript, page 68.) In short, while it is plainly admitted that some attachment proceedings by State courts are prohibited by the United States law cited, it distinguishes between them and puts this particular form of attachment proceedings without the prohibition; it divides these proceedings into two classes. (1) Attachment proceedings within the meaning of section 5242; (2) Attachment proceedings without the meaning of that statute, placing in the second class the proceedings now under immediate consideration in the case at bar. We contend that inasmuch as the statute says "no attachment, injunction, or "execution shall be issued * * * in any suit, action, "or proceeding, in any State, county, or municipal "court," the prohibition is too broad to admit of any

such division into classes, and that all attachments, injunctions or executions without any exception, are included, and intended to be included, in the prohibition, which exempts all National banks, whether solvent or insolvent. The attempt to make such a classification under the wording of the section named is illogical, and when the admission is made, as is done in the filed opinion of the learned Common Pleas Court of Philadelphia County, that an "attachment" in the case at bar has been served against the Chestnut Street National Bank, it admits away its case, the proceedings are null and void, and should have been vacated and dismissed.

(*c.*) In fact the differences, if any, suggested as existing between the writ of attachment *sur* judgment and a writ of foreign attachment under the statutory laws of Pennsylvania are slight, and go to the form rather than to the substance, the results secured are practically the same, but if the attachment *sur* judgment (attachment execution) contains elements of an injunction or of an execution, the prohibition of section 5242 embraces it all in clear diction. (*d.*) The State court could not acquire jurisdiction by the voluntary appearance or consent of the bank, or in any way, except by Act of Congress, therefore the filing of an answer to interrogatories by the bank in the proceedings invested it with no jurisdiction, and is of no effect in the case. Every step taken in the matter is utterly null and void. (*e.*) The learned president of the Common Pleas Court of Philadelphia County closes his opinion filed in the case with these words:—

> "The foregoing reasoning has the support of the "Court of Appeals of New York, which held that "section 5242 of the Revised Statutes of the United "States does not prohibit the issue of an attachment, "injunction, or execution against an insolvent Na- "tional bank. Corn Exchange Bank *vs.* Blye, 101 "N. Y., 303."
>
> (Transcript, pages 68, 69.)

The above-cited case, Bank *vs.* Blye, 101 N. Y., 303, decides the direct contrary to what is stated above, and holds that the issue of an attachment, injunction, or execution by a State court *is* prohibited by section 5242, but the action before the court was one in "replevin," not an attachment, injunction, or execution, and the court properly held, we think that an action in replevin is not included within the prohibition. The learned court below was guided into the error by some misleading or misquoted report of the case.

II. A SPECIFICATION OF ERRORS RELIED UPON.

1. It was error of the Pennsylvania Supreme Court to affirm the judgment of the lower court against the plaintiff in error entered on May 21st, 1898, making absolute the rule of defendant in error, then plaintiff, for judgment on answers (to interrogatories) of the bank as garnishee, and discharging the rule, upon behalf of the bank filed by plaintiff in error, "to vacate and dismiss the at-"tachment" (the bank then being in the hands of a Receiver appointed by the Comptroller of the Currency), for the reason that said State courts had not jurisdiction of the remedy by writ of attachment, injunction, or execution against the bank or against any National banking association, or its property in *mesne* process under section 5242 of the United States Revised Statutes.

2. It was error of the Pennsylvania Supreme Court not to have reversed the judgment of the lower court, and not to have ordered it to vacate and dismiss all attachment proceedings and to set aside all findings and judgments based thereon against plaintiff in error or the bank because null and void for want of jurisdiction in said courts, under the laws of the United States, more particularly section 5242 of the Revised Statutes.

3. It was error of the Pennsylvania Supreme Court not to have reversed the judgment of the lower court and

not to have ordered the attachment proceedings vacated and dismissed, for the reason that the issuance and service, returnable to said lower court of a writ of attachment *sur* judgment, or attachment execution, under the statutory laws of that State, against a National banking association or its property before final judgment against it, whether solvent or insolvent, is in conflict with that portion of section 5242, United States Revised Statutes, which says, "No attachment, injunction, or execution "shall be issued * * * in any suit, action, or pro- "ceeding, in any State, county, or municipal court."

4. It was error of the Pennsylvania Supreme Court not to have reversed the judgment entered May 21st, 1898, in the lower court, ordering the vacation and dismissal of the attachment proceedings, for the reason that while proceedings in attachment *sur* judgment (or attachment execution)—under the local laws of the State, issued and served in *mesne* process against the bank, and made returnable to said State court—were pending, the bank, on December 23d, 1897, became insolvent, and a Receiver, under section 5234, United States Revised Statutes, on January 29th, 1898, was appointed by the Comptroller of the Currency of the United States, who—qualifying prior to the judgment aforesaid upon the answers to interrogatories filed by the bank as garnishee—had taken and held possession of the books, records, and assets of every description of said banking association, as such Receiver, under the direction of the Comptroller of the currency, and was then, and is now, administering the duties of that trust, all of which was suggested of record in said lower court, and appears of record therein. The plaintiff in error, having entered his appearance and filed an affidavit in support of the suggestion of record and of a rule duly filed to vacate and dismiss the attachment for want of jurisdiction for reasons stated, long before judgment aforesaid in the lower State court was given. We call attention, more in detail, in this connection to the following points of error:—

(*a.*) The Receiver of an insolvent National bank is under the sole direction of the Comptroller of the Currency of the United States (section 5234, United States Revised Statutes). No power lies in any court or in any other person to direct the administration of his trust.

(*b.*) The Receiver of an insolvent National bank is required "to pay over all moneys to the Treasurer of the "United States, subject to the order of the Comptroller, "and make report to the Comptroller of all his acts and "proceedings" (section 5234, United States Revised Statutes), and it would be in violation of this statute for plaintiff in error to pay over moneys upon the judgment or order of May 21st, 1898, of the lower court of the State of Pennsylvania.

(*c.*) Only after "full provision first made for refunding "to the United States any deficiency in redeeming the "notes" of an insolvent bank is the Comptroller authorized to make a ratable dividend of the money so paid over to him by the Receiver (section 5236, United States Revised Statutes), and it would violate this statute if plaintiff in error undertook to pay a dividend upon the judgment or order of the Pennsylvania State court.

(*d.*) All claims against a Receiver of an insolvent National bank must first be either "proved to the satisfaction of the Comptroller or adjudicated in a court of competent jurisdiction." (1) No claim has been proved to the satisfaction of the Comptroller. (2) No claim has been adjudicated in a court of competent jurisdiction, because the lower court could not acquire jurisdiction by attachment in *mesne* process, which is the only ground for jurisdiction. (Sections 5236 and 5242, United States Revised Statutes.)

(*e.*) The judgment of the lower State Court of May 21st, 1898, requires plaintiff in error to pay $2900, and

interest thereon from October 28th, 1897, contrary to the ruling of this court that the Comptroller, in order to make dividends ratable pay interest, if at all, from the date of the bank's suspension, in this case from December 23d, 1897.

(*f.*) The defendant in error's only ground for a claim against plaintiff in error is technical, and is based solely upon the circumstance that the writ of attachment was served upon the bank six days prior to the payment in full by it of its $2900 indebtedness to Long. (Clearing House due bill.) There is no real merit to the claim of defendant in error; the debt to Long in his account was paid in full by the bank. Long remained a debtor to it on his note. The plaintiff in error, if required to pay, as adjudged by the lower State court, and affirmed by the Supreme Court of Pennsylvania, will pay for a second time out of the assets of the bank, to which the creditors are entitled to a ratable dividend, because of the legal force and effect of the attachment proceedings and for no other reason to a judgment creditor of Long, a sum of money for which it is not indebted to Long, it having been paid in full to him, and for which Long makes no claim whatsoever against plaintiff in error.

(*g.*) If the power lies in the State courts of Pennsylvania to so command, by attachment in *mesne* process, Receivers of National banks as to prevent the application of their assets in the manner prescribed by the National Bank Act, the power is not limited to an execution for a ratable dividend upon the sum adjudged due, as the lower State court "inclined" to do in this case, it extends to a full payment, violating that portion of section 5242, United States Revised Statutes, which says:—

> "All payments of money to either (shareholders "or creditors of a National bank) made after the "commission of an act of insolvency, or in contem- "plation thereof, made with a view to prevent the

"application of its assets in the manner prescribed "by this chapter, or with a view to the preference "of one creditor to another, except in payment of its "circulating notes, shall be utterly null and void."

(*h.*) Long had no ownership in, control over, or title to any property in the hands of the plaintiff in error, even basing the claim of defendant in error upon the fiction of the law alleged here to apply, for if the $2900 evidenced by the Clearing House due bill was a deposit of money, technically unpaid because of a prior service upon the bank as garnishee with a valid attachment (although in fact paid in full to Long six days thereafter), the deposit of money was not property of Long, but when made became a loan to the bank, and all property rights therein passed to the bank, leaving only an obligation of repayment in kind, upon demand. If Long has title and ownership to any specific property in the hands of plaintiff in error, or of any Receiver of a National bank, if necessary, he can have recourse to a writ of replevin for its recovery, but not a writ of attachment, injunction, or execution in *mesne* process.

(*i.*) The proceedings in issue in the case at bar have no element in them of an action in *replevin.*

(*j.*) Garnishing by writ of attachment in *mesne* process in a State court a National bank is prohibited by section 5242 of United States Revised Statutes, whether the bank is a solvent "going" institution or an insolvent one in the hands of a Receiver appointed by the Comptroller, and all such proceedings are utterly null and void.

III. A BRIEF OF THE ARGUMENT.

1. This court has jurisdiction to review upon writ of error a judgment of the highest court of a State when based upon proceedings under laws of the State that are

claimed to be in conflict with the laws of the United States.

Farmers and Mechanics' National Bank *vs.* Dearing (decided October, 1875), 91 U. S., 29.

California Bank *vs.* Kennedy (decided May 24th. 1897), 167 U. S., 362.

2. The constitutionality of the National Bank Act has been judicially determined, and the supremacy of Congressional over State legislation in matters of National banks is not here disputed.

Davis *vs.* Elmira Savings Bank (decided March 2d, 1896), 161 U. S., 275.

3. In the case at bar attachment was issued, against a National bank as garnishee under a State law, in a State court, by a judgment creditor—in an action in which the bank became a party as garnishee only subsequent to the judgment—and served in *mesne* process on October 28th, 1897. The bank failed December 23d, 1897, the U. S. Comptroller of the Currency appointed a Receiver on January 29th, 1898, who moved to vacate and dismiss the attachment for want of jurisdiction of the court on May 7th, 1898, and on May 21st, 1898, judgment was entered by the State court against the Receiver upon answers of the bank as garnishee (filed prior to its failure), to the interrogatories in the attachment proceedings.

The Receiver, before judgment, during pendency of the attachment, had entered his appearance in the case and made a suggestion of record as to his appointment as Receiver, and as to his taking and holding possession as such, of all the assets of the bank—thereby substituting himself as garnishee upon behalf of the bank for the purpose of moving "to vacate and dismiss the attachment"—all done in face of the prohibition contained in section 5242, U. S. Rev. Stat., which reads:—

> "No attachment, injunction, or execution shall be "issued against such association or its property be-"fore final judgment in any suit, action, or proceed-"ing in any State, county, or municipal court."

4. That the portion of section 5242 just quoted prohibits "State, county, or municipal courts" from issuing an "attachment, injunction, or execution" in *mesne* process "in any suit, action, or proceeding" against National banks, is conceded, as we understand it, both by the defendant in error and by the State courts of Pennsylvania, as stated in the order, judgment, findings, and opinion filed by the lower court.

Transcript, pages 66, 67, 68, and 69.

The attachment, however, it says, must be limited to a debt due by the bank in contradistinction from one due by a judgment debtor, and to a direct suit against the bank, such, for instance, as a "foreign attachment" as defined in the laws of Pennsylvania, providing also the bank is insolvent, because it is claimed this portion of the section must be read in connection with what precedes it which has reference only to insolvent associations. It is contended by the defendant in error, moreover, that the particular attachment in the case at bar is not an attachment within the meaning of the prohibition, but is entirely without it. That it really is not an attachment against the bank at all, but simply an attachment against the judgment debtor, and so states on the face of the writ, and that the proceeding, so far as the bank is concerned, is only a warning served upon it, and the bringing it into court, to there inquire and determine whether or not it has in its possession property of the judgment debtor, subject to levy and execution; that while the laws of Pennsylvania name the writ "attachment execution," and upon its face it is called "attachment *sur* judgment," it is nothing more or less than "garnishment," and that "garnishment" is not within the meaning of the prohibition.

In our endeavor to reach a true construction of the portion of section 5242 under immediate discussion in its bearing upon the case at bar, we present our views somewhat in detail under the following headings:—

(*a.*) The construction of section 5242, as given by the courts.

(*b.*) The sections of the Revised Statutes of United States particularly relied upon and the attachment laws of Pennsylvania providing for "attachment execution."

(*c.*) What is garnishment?

In Pacific National Bank *vs.* Mixter (decided February 20th, 1888), 124 U. S., 721. A National Bank Examiner was in charge of an embarrassed National Bank from November 20th, 1881, until March 18th, 1882, when the Comptroller permitted it to open its doors for business. On March 24th, 1882, creditors of the bank commenced suits, issuing orders of attachment with the original writs, as could be done under the laws of Massachusetts, and attaching deposits to the credit of the bank in two other banks of the same city. This action was brought in the United States Circuit Court. Before the issues were determined, the bank a second time closed its doors, and on May 22nd, 1882, the Comptroller appointed a Receiver. Before this, however, at once upon the commencement of the action, the bank secured a dissolution of the attachments, by giving bonds for which the laws of the State provided and it put up securities to secure the surety on the bonds from liability. The Receiver entered his appearance in the actions, filed answers upon behalf of the bank, and moved the discharge of the attachments and dismissal of the actions. His motions were all overruled and judgments entered against the bank. Thereupon he came to this court upon writs of error.

Not resting with these acts the Receiver, failing in his motions and defenses at law, filed a bill in equity in the same court against the attaching creditors, and the sureties on the bonds given to dissolve the attachments with the object of reducing to possession the securities held for protection against liability by the sureties, and to restrain the attaching creditors from enforcing the attachment bonds on the ground "that the attachments made in said actions were unauthorized, illegal, and void."

This bill in equity was dismissed by the Circuit Court (22 Fed. Rep., 694), and came upon appeal to this court.

The substantial facts in these cases are the same as the

facts in the case at bar, when carefully analyzed, and the principles of law governing them are equally applicable to this case.

1. The creditors attach in *mesne* process the deposits belonging to the defendant bank, the deposits happening to be in two other banks at the time, but it matters not whether in the vaults of other banks or its own, the deposits belonged to the defendant bank.

2. In the case at bar, Long, from a legal standpoint, is the attaching creditor to the use of the defendant in error—his judgment creditor—and sues the bank for an adjudication of his alleged claim, and attaches in *mesne* process the deposits in the bank itself by serving a writ of attachment execution upon the bank.

3. The difference between Mixter's case and the one at bar is in form, but not in substance. Mixter, at the inception of the suit, having then a claim against the bank, under the laws of Massachusetts, sought (1) a personal judgment, (2) attached the assets of the bank to await a determination of the suit; whereas the defendant in error in the case at bar, at the inception of its suit against Long under the laws of Pennsylvania, having no claim against the bank, simply sought a personal judgment against Long and the bank was not in any way a party to the action, it had no day in court in that proceeding whatever, when personal judgment was obtained against Long, then by the attachment-execution proceeding, and issuance and service of the attachment *sur* judgment against the bank, Long to the use of the defendant in error commences for the first time an action against the bank, for an adjudication of his claim, but commences it by an attachment in *mesne* process, garnishment, seizure by notice to the bank, restraining payment of the alleged indebtedness of the bank to Long, pending the adjudication. This *mesne* process is forbidden by section 5242, and the court acquired no jurisdiction of the bank by the issue and service of

that writ. The proceeding was not only voidable, but utterly null and void, just as the attachments in *mesne* process of Mixter in the Massachusetts case were declared null and void. In the Mixter case the original writ issued was of a twofold character, the bank was served as a defendant *in personam,* and at the same time attached *in rem,* before judgment was entered against it. The attachment in the Mixter case is vacated and dismissed by the decision of this court and the attachment proceedings are declared so utterly null and void, that the bonds given for dissolution of the attachments are declared also utterly null and void, but the adjudication of the claim by the judgment *in personam* remains, and of this the court had jurisdiction because acquired independently of the attachment, and upon this adjudicated claim the Comptroller, under section 5236, is authorized to pay dividends from the assets in the hands of the Receiver.

In the case at bar, the jurisdiction of the court in the suit of Long to the use of the defendant in error, over the bank (plaintiff in error) is entirely dependent upon the validity of the issuance and service of the writ of attachment execution against the bank in *mesne* process. It is conceded that the jurisdiction is acquired only by this writ of attachment *sur* judgment; the court therefore had no jurisdiction and its judgment of May 21st, 1898, is not a valid adjudication of any claim, but falls with the attachment, and is utterly null and void.

The Mixter case was in the United States Circuit Court, but this court holds that court had no jurisdiction, for, the reason, stated in its opinion on pages 726, 727 of report, viz.:—

> "The prohibition does not in express terms refer to "attachments in suits begun in the Circuit Courts of "the United States, but as by section 915 of the Re- "vised Statutes those courts are not authorized to "issue attachments in common law causes against the "property of a defendant, except as 'provided by the " 'laws of the State in which such court is held for the " 'courts thereof.' It follows that, as by the Amend-

"atory Act of 1873, now part of section 5242 of the "Revised Statutes, all power of issuing attachments "against National banks before judgment, has been "eliminated from State Statutes, there cannot be any "laws of the State providing for such a remedy on "which the Circuit Court may act. The law in this "respect stands precisely as it would if there were no "State law providing for such a remedy in any case. "It was suggested in argument that the prohibition "extended only to the use of the remedy by State "courts, and that the remedy itself still remained "to be resorted to in the courts of the United States. "But we do not so understand the law. In our "opinion the affect of the Act of Congress is to deny "the State remedy altogether, so far as suits against "National banks are concerned, and in this way oper-"ates as well on the courts of the United States as on "those of the States, although the provision was evi-"dently made to secure equality among the general "creditors in the division of the proceeds of the prop-"erty of an insolvent bank, its operation is by no "means confined to cases of actual or contemplated "insolvency. The remedy is taken away altogether "and cannot be used under any circumstances. It "was further said that if the power of issuing at-"tachments has been taken away from the State courts, "so also is the power of issuing injunctions. That "is true."

The opinion throughout is directly pertinent to the case at bar. We quote again from page 726 of report:—

"The fact that the amendment of 1873, in relation "to attachments and injunctions in State courts, was "made a part of section 5242 shows the opinion of "the revisers and of Congress that it was germane to "the other provision incorporated in that section, and "was intended as an aid to the enforcement of the "principle of equality among the creditors of an in-"solvent bank. But, however that may be, it is clear

"to our minds that, as it stood originally as a part of "section 57, after 1873, and as it now stands in the "Revised Statutes, it operates as a prohibition upon "all attachments against National banks under the "authority of the State courts. That was evidently "its purpose when first enacted, for then it was part "of a section which, while providing for suits in the "courts of the United States, or of a State, as the "plaintiff might elect, declared in express terms that "if the suit was begun in a State court no attach-"ment should issue until after judgment. The form "of its re-enactment in the Revised Statutes does not "change its meaning in this particular. It stands now, "as it did originally, as the paramount law of the "land that attachments shall not issue from State "courts against National banks, and writes into all "State attachment laws an exception in favor of Na-"tional banks. Since the Act of 1873 all the attach-"ment laws of the States must be read as if they "contained a provision in express terms that they were "not to apply to suits against a National bank."

In National Bank *vs.* Colby (decided by this court at October Term, 1874), 21 Wall., 609, it is held:—

"1. The property of a National bank organized un-"der the Act of Congress of June 3d, 1864, attached "at the suit of an individual creditor after the bank "has become insolvent, cannot be subjected to sale "for the payment of his demand, against the claim "for the property by a Receiver of the bank subse-"quently appointed."

In the case of C. Cadle, Jr., Receiver of the First National Bank of Selma, *vs.* Buford A. Tracy et al., in equity (decided by the United States Circuit Court for the Southern District of New York, April 23d, 1873), 11 Blatch., 101, *held*, Blatchford, J., rendering the opinion of the court:—

"T., a resident of Kentucky, and a creditor of a Na-"tional bank incorporated under the Act of Congress

"of June 3d, 1864 (13 U. S. Stat. at Large, 99), and "located in Alabama, brought a suit against it in the "Supreme Court of New York, to recover a debt al- "leged to be due from the bank to him, and in such "suit attached certain moneys in the possession of a "National bank in New York, as the property of the "Alabama bank. The suit was commenced by at- "tachment and publication of the summons. C., who "was appointed Receiver of the Alabama bank, under "the provisions of the said Act, was, on his own ap- "plication, submitted as defendant in such suit, in "place of the Alabama bank, with the like force and "effect as if the suit were continued in the name of "said bank, and thereupon put in an answer therein, "setting up a want of jurisdiction in the State court "over him, as an officer, or over the bank, or over "the subject of the action, and other defenses. The "suit was tried, and a judgment was rendered that "T. recover of C., as Receiver of the bank, a certain "sum, 'to be levied and collected of the moneys and " 'property whereon an attachment has been heretofore " 'levied in this action.' Afterwards, C. filed a bill in "equity in this court against T. and the New York "bank, praying for an injunction against T. from pro- "ceeding further on his attachment, or on any judg- "ment in the suit in which such attachment was is- "sued, and for the payment to him, C., of the moneys "in the hands of the New York bank. The Code of "Procedure of New York (section 227) provides "that in an action arising on contract, for the recovery "of money only, 'against a corporation created by, or " 'under the laws of, any other State, government, or " 'country,' the plaintiff, at the time of issuing the "summons, or at any time afterwards, may have the "property of such corporation attached, in the man- "ner thereinafter prescribed, as a security for the sat- "isfaction of such judgment as the plaintiff may re- "cover. The same Code (section 427) provides that "an action 'against a corporation created by, or under

"'the laws of, any other State, government, or "'country,' may be brought in the Supreme Court of "New York by a plaintiff not a resident of the State "of New York, 'when the cause of action shall have "'arisen, or the subject of the action shall be situated, "'within the State.' The bill proceeded on the "ground that the State court had no jurisdiction of "the suit against the Alabama bank, because it could "not acquire jurisdiction *in invitum* of a suit against "a corporation created under said Act, and also be-"cause the cause of action in such suit did not arise "within the State of New York, *held*:—

"(1.) That, so far as the provision of section 427 "of the Code of New York was concerned, the Su-"preme Court of New York had jurisdiction over "the suit.

"(2.) That the effect of the provisions of the fifty-"seventh section of the said Act of June 2d, 1864, "was to deprive the State court of jurisdiction over "the suit.

"(3.) That C. was not estopped by the proceed-"ings in the suit in the State court from questioning "the jurisdiction of that court over him, or its jur-"isdiction to render against him the judgment which "it did render.

"(4.) That C. was entitled to the relief prayed "for.

"A National bank incorporated under said Act can "be sued only in the courts designated in the fifty-"seventh section thereof.

"Whether the cause of action in the said suit arose "in New York *quære*.

"In the case of a corporation aggregate, no waiver "of an objection to jurisdiction can be produced, by "the fact that the corporation appears and pleads by "attorney."

In the case of Garner *vs.* Second National Bank of Providence *et al.*, decided by Judge Lacombe, of the

United States Circuit Court for the Southern District of New York, March 12th, 1895, 66 Fed. Rep., 369:—

"The plaintiff, a resident of New York, brought an "action in State court against defendant National "bank and individuals, all resident of Rhode Island. "A warrant of attachment was taken out against the "property of all three defendants, and certain moneys "of the defendant bank were attached in the hands "of the Fourth National Bank of the city of New "York. The usual order of publication was served "with the summons, January 7th and 8th, in the State "of Rhode Island. The defendant National Bank "filed its petition and bond for removal to the United "States Circuit Court, and after reviewing the ques- "tions arising upon the petition for removal, the court "sustained the application for removal, and says, on "page 379:—

" 'The case being properly removed, it only " 'remains to determine the motion to vacate " 'the attachment and service of summons. The " 'statutes of the United States expressly pro- " 'hibit the issuing of an attachment against a " 'National bank or its property before final " 'judgment in any State court. The Revised " 'Statutes United States, section 5242.

" 'Bank *vs.* Mixter, 124 U. S., 721, 8 Su- " 'preme Ct., 718.

" 'The attachment was, therefore, improperly " 'issued, and should be vacated, and inasmuch " 'as the summons was personally served out of " 'the State, such service should be set aside and " 'declared void. Motion granted.' "

In *New York* there are several decisions construing this statute. *Southwick* vs. *Bank* (decided by the Supreme Court of New York, at March Term, 1876), *7 Hun.*, *96*, holding that:—

"The amendment to the National Banking Act, "passed in 1873 (chapter CCLXIX., section 2), pro-

"viding 'that no attachment, injunction, or execu-
" 'tion shall be issued against such association or
" 'its property before final judgment in any such suit,
" 'action, or proceeding in any State, county, or mu-
" 'nicipal court' relates only to suits, actions, or pro-
"ceedings against associations located where the suit
"is brought, and not to cases where the action is
"against a non-resident corporation,"

was directly overruled by that court in *Rhoner* vs. *Bank*, decided at April Term, 1878, *14 Hun., 126*, saying that:—

"An attachment cannot be issued against a Na-
"tional bank before final judgment, even though it
"has property within this State, and is located and
"carries on business in another State. (Southwick
"*vs.* First National Bank of Memphis, 7 Hunn., 96.
"Overruled.)"

And the same court (Supreme Court of New York), in *The Central National Bank* vs. *The Richland National Bank of Mansfield*, decided November, 1876, 52 Howard's Practice, 136, held that:—

"An attachment cannot be issued against a Na-
"tional bank or its property before final judgment in
"any suit, action, or proceeding in any State, county,
"or municipal court. The issuing of an attachment
"against these institutions or their property is strictly
"prohibited by Congress, and it is only where juris-
"diction cannot be acquired without resort to attach-
"ment that the power of Congress to inhibit, or
"rather to postpone the use until final judgment of
"such provisional remedy seems to be at all ques-
"tionable.

"This prohibition does not in any manner inter-
"fere with the general jurisdiction of State courts
"over National banks; it does not take away the
"jurisdiction over such foreign corporations having
"property within this State; that jurisdiction is not

"acquired by virtue of provisions of the code proced-
"ure relating to this particular provisional remedy.
"The jurisdiction is acquired by the service of the
"summons, and that is effected by the provisions of
"section 134 of the Code, or where personal service
"cannot be had upon an officer, then it may be had
"by publication under the provisions of section 135."

In *William H. Robinson*, respondent, *vs. The National Bank of Newberne*, appellant (decided by the Court of Appeals of New York, June 15th, 1880), *81 N. Y., 385*, the court says:—

"The provision of said Act (section 5242) prohibit-
"ing the issuing of an attachment, injunction, or ex-
"ecution against such an association, or its property
"before final judgment applies only to an association
"which has become insolvent, or to one about to
"become so, as specified in the preceding part of the
"section." Danforth, J., says in his opinion on page
"393:—

" 'The subject matter of the section is the
" 'transfer of property by a banking association
" 'made after the commission of an act of in-
" 'solvency, or in contemplation thereof,'

"and when made under the circumstances therein
"stated, such transfer, it says,

" 'shall be utterly null and void, and no attach-
" 'tachment * * * shall be issued against
" 'such association or its property before final
" 'judgment in any suit, action, or proceeding
" 'in any State, county, or municipal court.'

"We concur with the general term in the opinion
"that these words of prohibition must be deemed to
"have the same relation as the other things prohib-
"ited, and apply only to insolvent corporations, or
"one about to become so, and that the object of the
"entire section is to prevent one creditor of the cor-
"poration whose assets are insufficient to meet its lia-
"bility from obtaining a preference, whether it is

"sought through a voluntary assignment or transfer "of the payment, or the form of a legal proceeding "* * * the attachment is not to bring the de- "fendant into court; its object is to give the plaintiff "execution against the thing attached. (Kilburn *vs.* "Woodworth, 5 Johns., 37); it does not go beyond it; "* * * it is confined to the property taken, and "if it cannot be maintained the plaintiff is remedi- "less."

The foregoing decision of the Court of Appeals of New York was in 1880, and the following two decisions were rendered by the same court in 1882 and 1883:—

In the case of *The National Shoe and Leather Bank of the City of New York*, appellant, *vs. The Mechanics National Bank of Newark*, decided by the Court of Appeals of New York on June 20th, 1882, 89 N. Y., 440, it was held that

"An order vacating an attachment issued before "judgment is not reviewable here. A Receiver of an "insolvent National bank appointed after the issuing "of an attachment against it may, under the Code of "Civil Procedure (section 682), move to vacate the "attachment without being made a party to the "action."

And in the case of *Samuel Raynor* et al., appellants, vs. *The Pacific National Bank of Boston*, respondents, *93 N. Y. Reports, 371.*

"An attachment issued against a National bank "which is at the time insolvent is invalid (United "States Revised Statutes, section 5242), and is not "made valid by the subsequent acquisition of the "bank of further capital. The fact that the bank, "after issuing of the attachment, pays in full does "not estop it from questioning the validity of the at- "tachment. The provision of the National Bank "Act prohibiting attachment in such cases is not re- "pealed by the Act of Congress of July 12th, 1883,

"providing that the jurisdiction for suits thereafter "brought against National banks shall be the same "as for suits against State banks, and repealing laws "inconsistent therein."

The facts in the foregoing case are practically the same as in Bank vs. *Mixter,* supra.

Then comes the decision in *The Corn Exchange Bank* vs. *Blye,* which is relied upon by the learned president of the Common Pleas Court of Philadelphia County, as stated in his opinion filed in the case at bar.

Transcript, pages 68 and 69.

This case was decided by the Supreme Court of New York in General Term, October, 1885, *37 Hun., 473.* It came to the General Term from the Supreme Court of New York, and it is described as an "Appeal from an "order setting aside the requisition issued by the plain- "tiff to the sheriff of Orange County, directing him to "take into his possession certain bonds and certificates "claimed by the plaintiff in an action for the recovery "of their possession."

The syllabus is as follows:—

Requisition in an Action to recover Personal Property When it may Issue in an Action against the Receiver of a National Bank. United States Revised Statutes, Section 5242.

"In this action of replevin brought against the Re- "ceiver of a National bank to recover bonds and certifi- "cates claimed to belong to the plaintiff, a requisition "issued by the plaintiff to the sheriff, directing him to "take possession thereof, was set aside upon the applica- "tion of the defendant, upon the ground that its issue was "prohibited by section 5242 of the United States Revised "Statutes.

"*Held,* that the prohibition contained in that section "against the issue of any 'attachment, injunction, or exe-

"'cution' against such an "association or its property be-
"'fore final judgment in any suit, action, or proceeding
"'in any State, county, or municipal court,' did not apply
"to such a requisition as was issued in this case; that it
"was only intended to prevent the interference with the
"assets or property owned by the bank itself, and not with
"such as might legally be claimed or proved to be the
"property of others."

In the opinion by the court, rendered by Daniels, J., Brady, J., and Davis, P. J., concurring, it is said:—

"Its (section 5242) object was to prevent the assets of
"an insolvent National bank from being appropriated or
"being interfered with by a creditor of the bank before
"the recovery of a final judgment in his action, and it has
"been so construed when it has been brought before the
"courts for consideration. (Robinson *vs.* Bank of New-
berne, N. Y., 81 N. Y., 385; Raynor *vs.* Pacific Bank,
93 *Id.*, 371; Rosenblatt *vs.* Johnston, 104 U. S., 462.)

"An action brought to recover the possession of prop-
"erty alleged not to be the property of the bank, and
"therefore not subjected to the custody or administration
"of its Receiver, is not included within the object or the
"language of this enactment. What it was designed to
"prevent was interference with the assets or property
"owned by the bank itself, and not those which might
"legally be claimed or proven to be the property of others.
"Its inhibition is that 'no attachment, injunction, or exe-
"'cution shall be issued against such association or its
"'property before final judgment in any suit, action, or
"'proceeding in any State, county, or municipal court.'
"The requisition of the plaintiff was in no sense an at-
"tachment, injunction, or execution; neither was it is-
"sued against the property of the association, but for the
"recovery of the possession of property claimed to belong
"to the plaintiff. This section of the statute has not pro-
"hibited a legal contest of this description; neither has it
"subjected the party asserting a right of this nature to
"any legal disability or restriction in the prosecution of

"the action. And it in no event can have the effect of "depriving the Receiver of any of the assets or property "owned by the bank or secure a preference to any cred- "itor therein. All that can be accomplished by it is to "secure the recovery of the possession of the property by "the plaintiff, if it shall prove to be able to support its "claim of title made to it. If that cannot be done, or "title shown to be in the defendant as Receiver, then the "property will necessarily be returned to him. The liti- "gation must be wholly and exclusively devoted to the "investigation of the question of title, and an action for "such an investigation has in no manner been affected "by this section of the statute; it is outside of the re- "straints contained in the statute, and has in no way been "prohibited."

The case was taken to the Court of Appeals of the State of New York and decided by that court January 19th, 1886, 101 N. Y., 303. The syllabus is as follows, viz.:—

"A Receiver of an insolvent National bank acquires no "right to property in the custody of the bank, which it "does not own, as against the owner, and the provision "of the United States Revised Statutes (section 5242), "prohibiting the issuing of an attachment, injunction, or "execution against such a corporation before final judg- "ment, was not intended to protect the Receiver's custody "as against such owner.

"Accordingly, *held*, that said provision did not prohibit "the issuing, in an action against the Receiver of a Na- "tional bank to recover possession of personal property, "of a requisition directing the sheriff to take into his pos- "session the property in question; that the Receiver, if "he desired to retain possession of the property during "the litigation, could only do so by giving the security "required, the same as other defendants in such an action."

And from the opinion of the court we quote as follows:—

"It (section 5242) specifically prohibits all transfers of "the corporate property made with a view to preferences,

"and so protects the creditors from any voluntary act of "the bank which selects out favored individuals for pay- "ment. But the bank may be passive and such individ- "uals gain a preference by a suit against the corporation, "preceded or accompanied by an attachment or injunction, "or after judgment enforced by an execution. These "three things were specifically prohibited by name, each "being process well known and accurately defined in the "law, and without any general words to carry the pro- "hibition beyond them. The Receiver, by his appoint- "ment, acquires no right to property in the custody of the "bank which the latter does not own, as against the real "owner; and the section in question was plainly not in- "tended to protect the Receiver's custody as against such "owner. It aims to protect the property of the bank in "his hands and not to give him arbitrary control of what "the bank does not own. If the latter should be held, "its injustice is well suggested by the general term in its "application to special deposits of customers left merely "for safekeeping. It does not alter the case that there "is a dispute about the title, and the Receiver claims to "be owner. He might make such a claim in any case. "No law makes him the inevitable stakeholder pending "the litigation. He may become so by giving the needed "security, and we can see no reason why he should be "exempted from that obligation which falls upon others. "The plaintiff is required to give such security as the con- "dition of the writ, and the Receiver need run no risk "in the performance of his duty. It is said the word " 'attachment' is used, not in the local sense affixed by "State enactments, but in a broader sense; and the defi- "nition of Bouvier is cited. But by that definition and in "every use of the term it always assumes title in the per- "son against whom the writ issues, and seeks to hold pos- "session of his property, and on the ground and for the "reason that it is his. *No nomenclature has ever made it "the equivalent of a writ of replevin, which issues upon a "theory exactly the reverse.*

"There is no collision of jurisdictions. The authority

"of the Federal courts over the assets and the right of its "officer to hold them is not questioned or invaded. No "property over which those courts have obtained jurisdic- "tion is interfered with. What is sought to be recovered "is property over which they have obtained no jurisdic- "tion, and as to which they have conferred no right upon "him."

The court, when it uses the description, "or after judgment enforced by an execution," seems to have in view a case similar to the one at bar, for after the judgment of May 21st, 1898, by Common Pleas Court against plaintiff in error, execution was issued in the case at bar. (Transcript, page 69). The foregoing decisions of New York State courts were all rendered before that of this court in Pacific National Bank *vs.* Mixter, *supra.*

In Maryland the question arose directly in *The Chesapeake Bank* vs. *The First National Bank of Baltimore, Garnishee of the First National Bank of Washington.* (decided by the Court of Appeals of Maryland, June 4th, 1874). *40 Maryland, 269.* Held:—

> "An attachment on warrant issued by a State court "to affect the funds of a National bank is illegal and "void, being in violation of section 57 of the Act of "Congress, chapter 106, approved June 3d, 1864, as "amended by section 2 of the Act of Congress, "chapter 26, approved June 3d, 1873, the latter sec- "tion providing 'that no attachment, injunction, or " 'execution shall be issued against such (banking) " 'association, or its property before final judgment " 'in any suit, action, or proceeding in any State, " 'county, or municipal court.' The second section "of the Act of Congress, chapter 269, approved March "3d, 1873, amending section 57 of the Act of Con- "gress, chapter 106, June 3d, 1864, is constitutional "and valid, being a provision to promote the effi- "ciency of the National banks in performing the "functions which they were designed to serve the

"Government and to protect them, not only against "interfering State legislation, but also against suits, "or proceedings in State courts by which their effi- "ciency would be impaired."

The facts of the case are stated in the opinion of the court—

"The appellant (Chesapeake Bank) on the 18th of "September, 1873, caused an attachment on warrant "to be issued out of the Superior Court of Baltimore "City to affect the property and credits of the First "National Bank of the city of Washington, D. C., "as a non-resident debtor, which was laid in the hands "of the First National Bank of Baltimore, as gar- "nishee. In October following, the garnishee filed a "motion to quash for reasons alleged and from the "judgment of the court quashing the writ, this ap- "peal is taken. It is conceded the decision of the "Superior Court was based upon the first reason stated "in the motion, as follows: "That said First National " 'Bank of Washington was, before said attachment, " 'and at the time of the issue thereof, and still is, " 'an association for the purpose of carrying on the " 'business of banking, organized duly under the Act " 'of Congress of June 3d, 1864, and that by the " 'second section of the Act of Congress, approved " 'March 3d, 1873, it is enacted that the fifty-seventh " 'section of the first mentioned Act be amended by " 'adding thereto the following: "that no attachment, " 'injunction, or execution shall be issued against such " 'association, or its property, before a final judgment " 'in any suit, action or proceeding, in any State, " 'county, or municipal court," and that by the force " 'of said section of said Acts the said attachment is " 'illegal and void.' "

The statute has been construed in other States:—

In Minnesota. In *First National Bank of Kasson* vs. *Ambrose La Duc* (decided by the Supreme Court of Min-

nesota, on November 20th, 1888), 39 Minn., 415, it is held:—

"The Federal statutes (U. S. Rev. St., section "5242), prohibit the issuance of writs of attachment "by the State courts before final judgment against "National banking associations or their property.

"An attachment and seizure of property made by "virtue of a writ so issued and served is illegal and "void and no jurisdiction over the person or property "of such an association is obtained thereby."

In Vermont. In *Safford* vs. *First National Bank of Plattsburg and Trustee* (garnishee) (decided by the Supreme Court of Vermont, at January Term, 1889), *61 Vt., 373*, the court decides:—

"Under U. S. Rev. St., section 5242, the property "of a National bank cannot be attached before final "judgment. The trusteeing a debt due such a bank "is in effect the attachment of the property of the "bank; hence when the only service on a non-resident "bank was by leaving a copy in the hands of the "trustee, such a service is void and the court obtains "no jurisdiction. The judgment overruling motion "to dismiss is reversed and motion sustained and cause "dismissed."

In *Georgia. The Planter's Loan & Savings Bank* vs. *Berry* (the statement of facts is in the case of the National Park Bank *vs.* Berry, 89 Ga., 33,) decided by the Supreme Court of Georgia, February 13th, 1893, 91 Georgia, 264. The syllabus reads:—

"The statute of the United States prohibits seizure "of property belonging to National banks *irrespective* "*to whether they be solvent or insolvent* before final "judgment by virtue of any attachment issued under "a State law, and returnable to a State court. *Any* "*such seizure is, therefore, void* and a bond given by a "National bank to dissolve such attachment *served* "*by summons of garnishment* is also void. The giv-

"ing of such bond is not an appearance in the attach-
"ment case, so as to make valid a judgment entered
"up on the bank in that case against the bank and the
"securities executing the bond. The judgment is
"wholly void and an affidavit of illegality made and
"filed by one of the securities in resistance to a levy
"upon his property under an execution founded on
"the judgment must be sustained. The judgment be-
"ing wholly void for want of jurisdiction in the court
"rendering it, affidavit of illegality is a proper de-
"fensive remedy."

Bleckley, Chief Justice, says:—

"How the statutes of the United States stand at
"the present time on the subject of protecting Na-
"tional banks against seizure of their effects by virtue
"of attachments in advance of final judgments, may
"be seen by reference to United States Revised Stat-
"utes, section 5242. The only words necessary to
"be now quoted are these: 'And no attachment, in-
" 'junction, or execution shall be issued against such
" 'association or its property before final judgment in
" 'any suit, action, or proceeding in any State, county,
" 'or municipal court.' The opinion, whether profes-
"sional or judicial, which construes this legislation as
"allowing seizure under attachment before final judg-
"ment in case the defendant bank is solvent, and pro-
"hibiting it only where the bank is insolvent, is
"manifestly unsound. Certainly, no such distinction
"is made in the letter, and we discern no necessity
"for it in the context or in the reason and spirit of
"the legislation. The statutory policy seems to be
"to prevent all preference or priority in claims against
"these banks sought to be acquired by seizure of ef-
"fects under State authority before final adjudica-
"tion of such claims, and to protect the banks from
"being weakened or crippled by such antecedent
"seizures. The National banks created by Con-
"gress are to control their own assets and resources,
"as against State interference at the instance of cred-

"and the extent of the power to be exercised by State "courts depend upon the permission of the United "States. The wrongs likely to be done by National "banks are of a pecuniary nature, and the banks "usually are amply able to make good any damage "which they may do, so that there is not the same "necessity for preventative remedies that there is with "individuals or corporations, for whose solvency less "stringent precautions are taken. We are of opinion "that the language of the statute must be read in "its natural sense, in accordance with what we un- "derstand to have been the view of the Supreme "Court of the United States in Bank *vs.* Mixter, *"supra."*

Sections 5234, 5236, 5242 of the U. S. Rev. Stat. are the sections particularly relied on as controlling this case.

Section 5234 provides for the appointment of the Receiver by the Comptroller of the Currency, and defines his duties as follows:—

"On becoming satisfied, as specified in sections "5226 and 5227, that any association has refused to "pay its circulating notes as therein mentioned, and "is in default, the Comptroller of the Currency may "forthwith appoint a Receiver, and require of him "such bond and security as he deems proper. Such "Receiver, under the direction of the Comptroller, "shall take possession of the books, records, and "assets of every description of such association; "collect all debts, dues, and claims belonging to it, "and upon the order of a court of record of com- "petent jurisdiction may sell or compound all bad "or doubtful debts, and on a like order may sell all "the real and personal property of such association "on such terms as the court shall direct, and may, if "necessary to pay the debts of such association, en- "force the individual liability of the stockholders. "Such Receiver shall pay over all money so made "to the Treasurer of the United States, subject to the

"order of the Comptroller, and also make report to "the Comptroller of all his acts and proceedings."

Section 5236 provides:—

"From time to time after full provision has been "first made for refunding to the United States any "deficiency in redeeming the notes of such associa- "tion. The Comptroller shall make a ratable divi- "dend of the money so paid over to him by such Re- "ceiver on all such claims as may have been proved "to his satisfaction, or adjudicated in a court of com- "petent jurisdiction, and as the proceeds of the assets "of such association are paid over to him, shall make "further dividends on all claims previously proved or "adjudicated, and the remainder of the proceeds, if "any, shall be paid over to the shareholders of such "association, or their legal representatives, in propor- "tion to the stock by them respectively held."

Section 5242 reads:—

"All transfers of the notes, bonds, bills of exchange, "or other evidences of debt owing to any National "banking association, or of deposits to its credit; all "assignments of mortgages, securities on real estate, "or of judgments or decrees in its favor; all deposits "of money, bullion, or other valuable thing for its "use, or for the use of any of its shareholders or "creditors, and all payments of money to either made "after the commission of an act of insolvency, or in "contemplation thereof, made with a view to prevent "the application of its assets in the manner prescribed "by this chapter, or with a view to the preference of "one creditor to another, except in payment of its "circulating notes, shall be utterly null and void. "No attachment, injunction, or execution shall be is- "sued against such association, or its property, before "final judgment in any suit, action, or proceeding in "any State, county, or municipal court."

The proceedings in attachment execution under the laws of Pennsylvania are so called because the writ is founded upon a judgment, and as this is the writ under discussion, we will quote from the laws of the State providing therefor. See Pepper & Lewis' Digest, commencing vol. I., page 1939, section 55 (1836, June 16th, P. L., 755, section 35):—

> "In the case of a debt due to the defendant, or of "a deposit of money made by him, or of goods or "chattels pawned, pledged, or demised as aforesaid, "the same may be attached and levied in satisfaction "of the judgment in the manner allowed in the case "of a foreign attachment, but in such case a clause "in the nature of a *scire facias* against a garnishee "in foreign attachment shall be inserted in such writ "of attachment requiring such debtor, depositary, "bailee, pawnee, or person holding by demise, as "aforesaid, to appear at the next term of the court, "or at such other time as the court from which such "process may issue shall appoint, and show cause "why such judgment shall not be levied of the effects "of the defendant in his hands."

Again, on page 1942, section 56, *Id.* (1836, June 16th, P. L., 755, section 36):—

> "It shall be the duty of the officer charged with "the execution of such writ, to serve a copy thereof "upon the defendant in such judgment and upon "every person and corporation within its proper "county named in the said writ of attachment, in the "manner provided for the service of a writ of sum- "mons in a personal action."

And again, on page 1942, section 58, *Id.* (1836, June 16th, P. L., 755, section 37):—

> "From and after the service of such writ all stock "belonging to the defendant in the corporation upon "which service shall be so made, and all debts and all

"deposits of money and all other effects belonging "or due to defendant by the person or corporation "upon which service shall be so made, shall remain "attached in the hands of such corporation or person "in the manner heretofore practiced and allowed in "the case of foreign attachment."

Again, on page 1943, section 59, *Id.* (1836, June 16th, P. L., 755, section 38):—

"If judgment shall be given for the plaintiff in such "attachment, it shall be lawful for him to have execu-"tion thereof, as follows, to wit: (1) If the property "attached be stock in a corporation, as aforesaid, the "execution shall be by writ of *fieri facias* against the "original defendant by virtue of which such stock, "or so much thereof as shall be necessary to satisfy "the judgment and costs, may be sold by the sheriff, "as in other cases; (2) If the property attached be a "deposit in money or a debt due, as aforesaid, exe-"cution shall be had in the manner allowed in the case "of effects in the hands of a garnishee in a foreign "attachment."

And again, on page 1946, section 64 (1872, April 5th, P. L., 43, section 1):—

"In all cases where execution attachments have "been, or which shall hereafter be, issued out of any "Court of Common Pleas (or district court) of this "Commonwealth attaching debts, moneys, stocks, or "other property in the hands of any persons or cor-"porations as garnishees, and when from any cause "proceedings have been stayed on the judgment on "which such execution attachments have been issued, "it shall be lawful for the defendant, or defendants "in the judgment on which said attachments shall "have been issued, to file a bond with one or more "sureties, to be approved of by the court issuing said "attachment, in such amount as the court shall di-

"rect, conditioned that the defendants shall pay to "the plaintiff, on the determination of the case, what- "ever amount shall be finally adjudged to be due by "the garnishees under the said attachments, if such "amount shall be required to pay the judgment and "costs, and on filing such bond, approved as aforesaid, "the said garnishee or garnishees shall thereupon be "discharged from all further liability under said at- "tachment, but the cause may be prosecuted to final "judgment for the purpose of ascertaining the amount "due by the garnishee, but the defendant and his sure- "ties in the bond shall alone be liable to pay such "judgments and costs."

And again, on page 1947, section 65, *Id.* (1863, April 22d, P. L., 527, section 1):—

"Where in any attachment-execution, or *scire* "*facias* on foreign attachment issued out of any court "of record in this State, the garnishee, after issue "joined therein, shall be found to have in his pos- "session or control no real or personal property of "the defendant, nor to owe him any debt other than "such property or debts as shall have been already "admitted by the plea or answers of the garnishee, "or in case without going to trial the plaintiff shall "take judgment against the garnishee for what shall "be so admitted in his plea or answer, then, and in "either such case, the garnishee shall be entitled, in "addition to the costs already allowed by law, to a "reasonable counsel fee out of the property in his or "their hands, to be determined and taxed in case of "dispute by the court, or by some person appointed "for that purpose."

The only exemption to attachment execution under this law is on page 1946, section 63, *Id.* (1845, April 15th, P. L., 459, section 5):—

"The wages of any laborers, or the salary of any "person in public or private employment, shall not

"be liable to attachment in the hands of the em-
"ployer."

In Pennsylvania the laws provide for attachment proceedings as follows:—

1. A "domestic attachment" is a proceeding against an inhabitant of the State who absconds, &c., with intent to defraud creditors or avoid service of process.

Brewster's Practice (Common Pleas) (2d ed., 1896), vol. I., 108 *et seq.*

2. A "foreign attachment" is a proceeding against non-residents of the State.

Brewster's Practice (Common Pleas) (2d ed., 1896), vol. I., section 75 *et seq.*

3. An attachment, under the "Fraudulent Debtors' Act of 1869," applies to removal or assignment or concealment of property, and to fraud in contracting the debt.

Brewster's Practice (Common Pleas) (2d ed., 1896), vol. I., section 51 *et seq.*

4. An attachment execution or attachment *sur* judgment is, as its name implies, an attachment begun after judgment has been first entered against the defendant.

Brewster's Practice (Common Pleas) (2d ed., 1896), vol. II., section 3253 *et seq.*

Brewster's Practice is a recognized authority upon all subjects of practice in the State of Pennsylvania.

The "domestic," "foreign," and "fraudulent debtor" proceedings before named are generally used where an attachment is sought at the inception of the suit, and have a twofold purpose: (1) Personal service upon the defendant against whom a judgment is desired; (2) an immediate lien on defendant's property to await and satisfy such judgment, if attached. The first is by the writ of summons in *assumpsit*, &c., and the second by seizure by writ

of attachment of defendant's property, subject to direct levy and execution, or by garnishing defendant's property in the hands of his debtors that is not subject to direct levy and execution.

In each of them garnishment is an important feature of the attachment proceedings. It is not necessary for the attachment to issue at the inception of the suit; personal service may first be had, and attachment proceedings begun after personal service upon the defendant, but before judgment. In each of the first three proceedings named the claim of the plaintiff not having been determined before judgment, the defendant is protected from oppressive suits by requiring, as a prerequisite to attachment, an affidavit as to the truth and justness of the claim, and a bond of indemnity against damages in case of failure of suit. The dual proceedings being (1) *in personam* (seeking a personal judgment against defendant); (2) *in rem* (seizure or garnishment of property of defendant awaiting the issue *in personam*).

In the "attachment execution" proceeding, the fourth named, the one now under consideration, the defendant in error first pursued Long, *in personam*, to judgment before pursuing him *in rem*. It is upon the judgment *in personam* against Long that the writ of attachment is issued and served against the bank as garnishee. The writ of attachment is practically the same as it would have been if issued against the bank, garnishee, under "domestic," "foreign," or "fraudulent debtor" proceedings—the bank, by a summary proceeding commenced against it, is attached in mesne process summoning it into court to appear and answer within fifteen days or judgment *sec. reg.*

No more effectively could an injunction restrain than an "attachment execution." It operates as an injunction, also as an execution or aid in execution. It has in it all the elements expressly prohibited and intended to be prohibited by Congress in the letter and spirit of the enactment in the Revised Statutes, section 5242.

Shinn on Attachment & Garnishment, vol. I., section 191 *et seq.;* also *Id.*, vol. II., section 466 *et seq.*

In the case of Ege *vs.* Koontz (decided by the Supreme Court of Pennsylvania in 1846), 3 Pa. St., 109, it is *held*:—

> "The legal effect of an attachment laid upon a debt "is, to restrain the garnishee from paying over the "money, either to his individual creditor or to the at- "taching creditor, until the attachment is disposed "of, and then only according to the result of that "proceeding."

Ancillary, in a sense, to the action against Long *in personam*, in which judgment has been entered and in which sense only, that is, from the standpoint of the judgment, it is sometimes called "final process;" in another sense, that of its relation to the garnishee, it is the commencement of an original "suit, action, or proceed- "ing" by the judgment debtor (Long) to the use of the judgment creditor of Long (defendant in error) by attachment in *mesne* process against the bank, or its Receiver. "Proceedings upon attachment execution bear a "close analogy to those in foreign attachment, subsequent "to the judgment aganst defendant."

Brewster's Practice (Common Pleas) (2d ed., 1896), vol. II., section 3261;

Shinn on Attachment & Garnishment (1896), vol. II., section 469 *et seq.;*

Gochenaur's Executors *vs.* Hostetter, 18 Pa. St., 414;

Childs *vs.* Digby, 24 Pa. St., 26-27;

Shinn on Attachment and Garnishment (1896), vol. II., section 469 and cases cited in note.

Garnishment is a supplemental proceeding to execution.

Freeman on Execution (2d ed.), vol. II., section 416;

Am. & Eng. Enc. of Law, vol. VIII., page 1101.

Garnishment is a mode of attachment, a seizure by notice.

Am. & Eng. Enc. of Law, vol. VIII., 1101 *et seq.;*
Rood on Garnishment (1896), section 192 (page 238);
Shinn on Attachment & Garnishment (1896), vol. II., section 467.

General nature of garnishment.

Am. and Eng. Enc. of Law, vol. VIII., page 1100;
Rood on Garnishment (1896), chapter I.;
Shinn on Attachment & Garnishment (1896), chapter XXIII.

"Garnishment is a proceeding by which the plaintiff, in a suit to recover on a debt, may institute "another suit at law, in lieu of the defendant, against "a debtor of the defendant, without the defendant's "concurrence, and it may be against his will to subject the money or property in the hands of such "debtor to the satisfaction of the plaintiff's judgment "in the first suit."

Shinn on Attachment & Garnishment (1896), vol. II., section 465 *et seq.*

"The right of attachment by garnishment is not "known to the common law. It depends wholly "upon the provisions of the statute for its validity "and effect, and it cannot be extended beyond the "strict provisions thereof."

Shinn on Attachment & Garnishment, vol. II., section 485.

National, State, and municipal governments and public officers are exempt from garnishment. (Among other reasons, because it is against public policy.)

Rood on Garnishment (1896), sections 25, 26.

The Federal government, the State, the District of Columbia, a county or borough, a city, the town, a school district cannot be made a garnishee.

Shinn on Attachment & Garnishment (1896), vol. II., section 500, and note on page 873 and cases cited.

A treasurer or other officer of a National, State, or municipal government is beyond the reach of a process of garnishment.

Id., section 503.

In this connection we quote from the opinion in Farmer's & Mechanic's National Bank *vs.* Dearing, decided by this court at October Term, 1897, error to the Court of Appeals of the State of New York, *91 U. S., 29*. The usury laws of the State of New York were held to be in conflict with the laws of the United States, and the judgment of the Court of Appeals of that State was reversed. Mr. Justice Swayne, rendering the opinion of this court, on page 33 says:—

"The constitutionality of the Act of 1864 (National "Bank Act) is not questioned. It rests on the same "principle as the Act creating the Second Bank of "the United States. The reasoning of Secretary "Hamilton, and of this court in McCulloch *vs.* Mary"land (4 Wheat., 316), and in Osburne *vs.* The Bank "of the United States (9 *Id.*, 708), therefore applies. "The National banks organized under the Act are "instruments designed to be used to aid the Govern"ment in the administration of an important branch "of the public service. They are means appropriate "to that end. Of the degree of the necessity which "existed for creating them Congress is the sole judge. "Being such means brought into existence for the "purpose, and intended to be so employed, the States "can exercise no control over them, nor in anywise "affect their operation, except in so far as Congress

"may see proper to permit. Anything beyond this "is 'an abuse, because it is the usurpation of power " 'which a single State cannot give' against the "National will. 'The States have no power, by tax- " 'ation or otherwise, to retard, impede, burden, or " 'in any manner control the operation of the consti- " 'tutional laws enacted by Congress, to carry into exe- " 'cution the powers vested in the general govern- " 'ment.' "

Bank of the United States *vs.* McCulloch, *supra;*
Weston & others *vs.* Charleston, 2 Pet., 466;
Brown *vs.* Maryland, 12 Wheat., 419;
Dobbins *vs.* Erie County, *Id.*, 419.

"The power to create carries with it the power to "preserve. The latter is a corollary from the former.

"The principle announced in the authority cited is "indispensable to the efficiency of the independence, "and, indeed, to the beneficial existence of the gen- "eral Government, otherwise it would be liable in the "discharge of its most important trusts, to be an- "noyed and thwarted by the will or caprice of every "State in the Union. Infinite confusion would fol- "low. The Government would be reduced to a piti- "able condition of weakness. The form might re- "main, but the vital essence would have departed."

In view, therefore, of the fact that "National banks "organized under the Act are instruments designed to be "used to aid the Government in the administration of an "important branch of the public service," and were created and are controlled solely by the laws of the United States, and in a sense are agents of the United States, it is in line with the exemption of the United States "Gov- "ernment" and its public officers from being subjected to the process of garnishment, that National banks should be so exempted, and the construction, we claim, for section 5242 is the natural one, and in accord with ruling principles and reason.

The Receiver of a National bank appointed by the Comptroller of the Currency, as provided by law, is presumed to be appointed by the approval and concurrence of the Secretary of the Treasury, within the meaning of section 2, article II., of the Constitution of the United States, and is an officer of the United States.

Price *vs.* Abbott, 17 Fed. Rep., 506;
Frelinghuysen *vs.* Baldwin, 12 Fed. Rep., 395;
Armstrong *vs.* Ettlesohn, 36 Fed. Rep., 209;
In re Petition of Chetwood, 165 U. S., 443.

In the bill for discovery in aid of execution with interrogatories filed by the defendant in error in the case at bar in the Common Pleas Court, No. 4, of Philadelphia County, on December 7th, 1897 (Transcript, pages 51 to 56, inclusive), no specific allegation is made that the Chestnut Street National Bank is indebted to Long in the sum of $2900 and interest from October 28th, 1897, nor that the bank has in its possession any stocks or personal property belonging to Long, but in the answer of Long to the interrogatories attached to the bill of discovery and propounded to him by defendant in error, Long says that the bank is neither indebted to him or holds any stocks or property belonging to him whatsoever.

In the interrogatories attached to the bill of discovery put to Long, defendant in error asks, Interrogatory No. 11: "Do you own choses in action or personal property? "If you answer aye, describe the same fully; state where the "same now is, in whose custody or control, and what "is the extent of your interest therein."

Interrogatory No. 12: "Have you in your own right "moneys which you have, or which are placed out at "interest, or invested in stocks, bonds, loans, or evidences "of indebtedness of any person or company, incorporated "or otherwise, from which you are entitled to, or may

"derive income or other return? If you answer aye, "state what money you have, and describe the said stocks, "bonds, loans, or evidences of indebtedness, with the names "and residences of the persons liable to you on account "of the same, the times when and the place where the "income derived therefrom is payable, and what is the "extent of the said income."

(Transcript, page 55.)

To these interrogatories Long answered as follows:—

"11. To the eleventh interrogatory:

"I own no choses in action or personal property "save my wearing apparel and a few personal ar- "ticles, not exceeding in all $300 in value.

"12. To the twelfth interrogatory:

"I have no moneys at interest or invested in stocks, "bonds, loans, or evidences of indebtedness of any "person or company, incorporated or otherwise."

(Transcript, page 62.)

In the interrogatories attached to the bill of discovery, this further question is put to Long:—

"No. 16: Did you not receive on November 3d, "1897, from the Chestnut Street National Bank their "due bill for $2444.32, and collect the same in cash? "If so, have you still same, or a part thereof, in your "possession? If you answer 'No'; what disposition "have you made of same?"

(Transcript, page 56.)

To this interrogatory Long answered as follows:—

"No. 16 to the sixteenth interrogatory: I did re- "ceive on November 3d, 1897, from the Chestnut "Street National Bank, their due bill for $2444.32, "and collected the same in cash. I have no part of "said sum now in my possession. I have spent the

"whole of it, partly for living expenses, $576.95 for "rent due by me, and $910.58 for interest due upon "a bond and mortgage on my Virginia property, "held by the estate of Ario Pardee."

(Transcript, page 62.)

It will be remembered that on November 3d, 1897, the balance of the $2900, $455.68, was ordered credited by Long on account of interest due on his note to the bank, making the payment of the bank to Long in full.

It has been said by the learned counsel for defendant in error:—

"The act of attachment is merely to require the "bank, instead of paying to Long such dividend as "may be awarded to him upon his deposit, to pay it "to his judgment creditor in satisfaction of his judg- "ment."

(Passing, for the sake of argument, the fact that the bank is not indebted to Long)—

We answer, if the power lies in the State court to order upon a writ of attachment in *mesne* process, garnishing a National bank, or the Receiver of an insolvent National bank, to pay a judgment creditor the debt due by it to the judgment debtor, the power is included not only to pay by dividends, but to pay in full, for if the State court has jurisdiction by attachment at all, it has the same power that it would have in a case other than one against a National bank, and it was this power that Congress has deemed it wise to arbitrarily eliminate from the State courts—illustrating, a National bank contemplates insolvency, liabilities $100,000; assets $50,- 000, with 100 depositors; it owes 10 depositors $50,000 and the remaining 90 depositors $50,000. The 10 depositors confess judgments aggregating $50,000 to their creditors in a State court, and their then judgment creditors at once seize by notice, (garnish) the assets of the bank (Receiver) by issuing and serving writs of at-

tachment *sur* judgment, by this process securing to themselves all the assets, leaving nothing to be administered upon in the hands of the Receiver by the Comptroller of the Currency under section 5234, United States Revised statute.

The rights of the creditors of the creditors of an insolvent National Bank are not greater than those of its immediate creditors, and it must be observed that the application to vacate and dismiss the attachment is in this case not made by the bank for the benefit of its stockholders, but by the Receiver of the bank for the benefit of its creditors.

We cite also—

Auburn Savings Bank *vs.* Hayes, 61 Fed. Rep., 911;
The Ocean National Bank *vs.* Carll, 7 Hun., 237;
Wade on Attachments, section 332;
Drake on Attachments (7th ed.), section 452;
Bank of Northern Liberties, Garnishees, *vs.* Jones *et al.*, 42 Pa. St., 536;
White *vs.* Knox, 111 U. S., 784;
National Security Bank *vs.* Butler, 129 U. S., 223.

A Table of the Statutory Laws Cited.

Revised Statutes of the United States, sections 5234, 5236, 5242.

Pepper & Lewis' Digest (Penna. Laws), vol. I., page 1939, section 55 (1836, June 16, Penna. Laws, 755, section 35).

Id., page 1942, section 56 (*Id.*, section 36).

Id., page 1942, section 58 (*Id.*, section 37).

Id., page 1942, section 59 (*Id.*, section 38).

Id., page 1946, section 64 (1872, April 5th, Penna. Laws, 43, section 1).

Id., page 1947, section 65 (1863, April 22d, Penna. Laws, 527, section 1).

Id., page 1946, section 63 (1845, April 15th, Penna. Laws, 459, section 5).

A Table of the Cases and Authorities Cited.

Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, Trustee, &c., appellee, *vs.* George H. Earle, Jr., Receiver of the Chestnut Street National Bank, appellant, 189 Pa. St., 606.

Pacific National Bank *vs.* Mixter, 124 U. S., 721.

Corn Exchange National Bank *vs.* Blye, 101 N. Y., 303.

Farmers and Mechanics' National Bank *vs.* Dearing, 91 U. S., 29.

California Bank *vs.* Kennedy, 167 U. S., 362.

Davis *vs.* Elmira Savings Bank, 161 U. S., 275.

Garner *vs.* Second National Bank, 66 Fed. Rep., 369.

Southwick *vs.* Bank, 7 Hun. (N. Y.), 96.

Rhoner *vs.* Bank (overruling Southwick *vs.* Bank), 14 Hun. (N. Y.), 126.

The Central National Bank *vs.* The Richland National Bank, 52 How. Pr. (N. Y.), 136.

Robinson *vs.* Bank, 81 N. Y., 385.

The National Shoe and Leather Bank *vs.* Bank, 89 N. Y., 440.

Raynor *vs.* Bank, 93 N. Y., 371.

The Chesapeake Bank *vs.* Bank, Garnishee, 40 Maryland, 269.

Bank *vs.* La Due, 39 Minn., 415.

Safford *vs.* Bank and trustee (garnishee), 61 Vt., 373.

The Planter's Loan & Savings Bank *vs.* Berry, 91 Georgia, 264.

Freeman Manufacturing Company *vs.* Bank, 160 Mass., 398.

Gochenaur's Executors *vs.* Hostetter, 18 Pa., St., 414.

Childs *vs.* Digby, 24 Pa. St., 26, 27.

Price *vs.* Abbott, 17 Fed. Rep., 506.

Frelinghuysen *vs.* Baldwin, 12 Fed. Rep., 395.

Armstrong *vs.* Ettlesohn, 36 Fed. Rep., 209.

In Re Chetwood, Petitioner, 165 U. S., 443.

Auburn Savings Bank *vs.* Hayes, 61 Fed. Rep., 911.

The Ocean National Bank *vs.* Carll, 7 Hun. (N. Y.), 237.

Cadle, Receiver of the First National Bank of Selma, *vs.* Tracy, 11 Blatch., 101.

Bank of Northern Liberties, Garnishees, *vs.* Jones, 42 Pa. St., 536.

National Bank *vs.* Colby, 21 Wall., 609, 613.

White *vs.* Knox, 111 U. S., 784.

National Security Bank *vs.* Butler, 129 U. S., 223.

Brewster's Practice (Com. Pleas) (2d ed., 1896), vol. I., sections 108 *et seq.*, 75 *et seq.*, 51 *et seq.*; vol. II., sections 3253 *et seq.*, 3261 *et seq.*

Shinn on Attachment & Garnishment, vol. I., section 191 *et seq.*, chapter XXIII.; vol. II., sections 465 *et seq.*, 467, 469 *et seq.*, and cases cited in note, 485, 500, and note and cases cited, 503.

Freeman on Executions (2d ed.), vol. II., section 416.

Am. & Eng. Enc. of Law, vol. VIII., pages 1100, 1101 *et seq.*

Rood on Garnishment (1896), sections 25, 26, 192.

Id., chapter I.

Wade on Attachments, section 332.

Drake on Attachments (7th ed.), section 452.

Respectfully submitted,

ASA W. WATERS,
W. H. ADDICKS,
Attorneys for Plaintiff in Error.

ADDITIONAL ARGUMENT FOR PLAINTIFF IN ERROR.

1. The principal question involved is whether the attachment issued in this case is forbidden by that portion of section 5242, United States Revised Statutes, which says: "No attachment, injunction, or execution shall be issued against such association, or its property before final judgment in any suit, action, or proceeding in any State, county, or municipal court." This Act of Congress does not take away from State courts jurisdiction of National banks now granted except as to attachments, injunctions, and executions before final judgment against them.

Pacific National Bank *vs.* Mixter, 124 U. S., 721;
Raynor *vs.* Bank, 93 N. Y., 371;
Bank of Montreal *vs.* National Bank, 1 N. Y. Supplement, 852;
Corn Exchange National Bank *vs.* Blye, 101 N. Y., 303;
The Chesapeake Bank *vs.* Bank, 40 Maryland, 269;
Bank *vs.* La Due, 39 Minn., 415;
Safford *vs.* Bank, 61 Vt., 373;
Bank *vs.* Berry, 91 Georgia, 264;
Freeman *vs.* Bank, 160 Mass., 398;
Garner *vs.* Bank, 66 Fed. Rep., 369.

2. An attachment execution was issued by the State Court of Pennsylvania on October 5th, 1897, and was served upon the Chestnut Street National Bank at eleven o'clock and thirty-five minutes A. M., on October 28th, 1897, pursuant to the provisions of the Act of June 16th, 1836, of the laws of Pennsylvania (Pepper & Lewis' Digest, vol. I., page 1939), providing, among other things, that a debt or deposit of money due a judgment debtor "may be attached and levied in satisfaction of the judgment in the manner allowed in the case of foreign attachment." (Transcript, pages 27, 28.)

3. By the Act of March 20th, 1845, Pa. Pamphlet Laws, 188, section 4 (P. & L. Digest, page 1942), it was not necessary to

serve the judgment debtor with a copy of the writ of attachment if a non-resident, and it is held by the courts of Pennsylvania that the return by the sheriff of *nihil habet* is conclusive as to non-residence. The return in this case was so made. (Transcript of record, page 28. See also Transcript, page 23.) The judgment debtor, Long, was a non-resident, and the proceedings were therefore in fact as well as in form those of foreign attachment.

4. Section 37 of the Act of June 16th, 1836 (P. & L. Digest, page 1942), states the effect of the service of this writ of attachment execution in words as follows: "From and after "the service of such writ, all stock belonging to the defendant "in the corporation upon which service shall be so made, and "all debts and all deposits of money and all other effects be- "longing or due to defendant by the person or corporation "upon which service shall be so made shall remain attached in "the hands of such corporation or person in the manner here- "tofore practiced and allowed in the case of foreign attach- "ment."

5. The Act of June 13th, 1836, of Pa. Pamphlet Laws provides for foreign attachment. (Pepper & Lewis' Digest, vol. I., pages 2155–2179.)

6. By section 55 of the Act of June 13th, 1836 (P. & L. Digest, page 2168), providing for foreign attachment:—

> "After judgment as aforesaid, it shall also be lawful "for the plaintiff to exhibit in writing to every garnishee "as aforesaid all such interrogatories as he may deem "necessary touching the estate, and in the hands of the "defendant, in his possession or charge, or due and owing "from him, as the case may be, to the defendant at the "time of the service of such writ, or at any other time, "and cause the same to be filed of record in the cause."

Pursuant to the foregoing provision, interrogatories in writing were exhibited to the Chestnut Street National Bank by the defendant in error (then plaintiff), and judgment creditor

in the State court, and the same were filed of record in the cause. (Transcript, pages 45, 46.)

7. By section 56 of the Act of June 13th, 1836, aforesaid (P. & L. Digest, page 2168), "Whenever interrogatories shall be filed as aforesaid, it shall be the duty of the court, upon the motion of the plaintiff, to grant a rule upon the garnishee to appear before the said court at a time and place in such rule to be named, and

> "then and there to exhibit in writing, under his oath or "affirmation, full, direct, and true answers to all and sin- "gular the interrogatories of the plaintiff exhibited and "filed as aforesaid, or such of them as the court shall "deem pertinent and proper."

Pursuant to this provision of the State law a rule was granted upon the garnishee—the Chestnut Strect National Bank—"to appear and answer the interrogatories within twenty days, or judgment *sec. reg.*" (Transcript, page 46.)

8. Answers of the Chestnut Street National Bank, garnishee, to these interrogatories, in compliance with the rule of the court, were filed November 24th, 1897. (Transcript, pages 47, 48, 49, and 50.) Among other things, the bank answers as follows:—

> "*Second.*—To the second interrogatory, I answer, that "said bank has had business relations with the defendant. "That there was no balance in his favor then (at the time "of the service of the writ), and there has been none since "up to this date in said The Chestnut Street National "Bank, but that said James Long was indebted to said "bank in the sum of $17,831, with interest from the "twenty-second day of April, 1897.
>
> "*Third.*—In answer to the third interrogatory I answer, "that at the time the writ in the above case was served "upon the Chestnut Street National Bank, the said bank "was not indebted to the said defendant in any manner "whatsoever, so far as is known to the said bank, and "the said bank has no knowledge that at the time the

"writ in the above case was served the said defendant, "James Long, held any bill, bond, note, or other instru- "ment of writing then due upon which the said bank had "become in any manner liable. Prior to the service of "the writ in the above case upon the said bank, to wit, "September 20th, 1897, the said bank issued a duebill "for the sum of $2900, of which the following is a true "and correct copy:—

"Number 20,968.

"CLEARING-HOUSE DUE BILL.

"THE CHESTNUT STREET NATIONAL BANK.

"PHILADELPHIA, Sept. 20, 1897.

"Due by the Chestnut Street National Bank to banks, "two thousand nine hundred and —— dollars.

"This due bill is only good when signed by one and "countersigned by another authorized person, and is "payable only in the exchanges through the clearing- "house the day after issue.

W. W. PRICE,
Teller.

"$2,900.00.

"Countersigned:

"W. STEELE,
"*Cas.*"

The copies of the duebills are on page 48 of the Transcript. The duebills are payable "to banks," and "only in the exchanges through the clearing house the day after issue," and it is so stated on their face. They are practically payable to bearer, and when issued to Long, the bank was no more definitely indebted to Long, because of handing him the duebill, than it would be if it had handed him its circulating bank note payable on demand to bearer. The authority to give the duebills and to issue its circulating bank bills comes to it from the same section of the Revised Statutes (5136), and in our opinion when Long presented to the bank the duebill issued to him for $2900, on September 20th, 1897, he was doing nothing more than if he had presented, for example, a $1000 cir-

culating note of the bank, and had offered it in payment of the interest on his indebtedness, and had accepted in return the difference above the interest in circulating bank notes of smaller denomination of the bank, and that the simple fact of the presentation of this duebill by Long does not show an indebtedness to Long because the duebill on its face just as the circulating notes of the bank (money) are payable to bearer, and there was no obligation to Long by the bank outstanding at the time the writ of attachment was served upon it, nor since, and on or about November 3d, 1897, all duebills to Long were paid in full. The answer of the bank denies any indebtedness to Long, and it was error of the State court to enter a judgment upon the answer under the rulings of the Supreme Court of Pennsylvania. It should have gone to a jury in a case where the jurisdiction was unquestioned.

McCallum *vs.* Lockhart, 179 Pa. St., 427;
Hagy *vs.* Hardin, 186 Pa. St., 428.

9. By the Act of March 29th, 1891, Pa. Pamphlet Laws, 35, section 2 (P. & L. Digest, page 2167)—

> " Each said garnishee so appearing shall thereupon be
> " deemed and taken to be a party to the cause, and shall
> " be entitled to all process of the court looking to speed-
> " ing the cause and securing final disposition thereof."

So that the Chestnut Street National Bank became a party defendant when summoned by this writ of attachment execution to an original proceeding begun by the issue and service of the writ upon it. The process was one against the bank *in personam*. It served notice upon the bank that it was enjoined at its personal risk from thereafter making any settlement with Long without warrant, as we claim, and caused it to come into court and put it to the expense of a legal defense, and enjoined the bank from making any change in the status of its dealings with Long. The bank, from October 28th, 1897, was attached by the service of this writ, and it will be noted that the section 5242 aforesaid prohibits an attachment against such association *in personam* as well as *in rem*, for it says: " No attachment, injunction, or execution shall be issued against such association or its property."

10. In the answers of the Chestnut Street National Bank, on page 49 of the Transcript, we find the following:—

"*Fifth.*—And when the writ in the above case was "served the said bank held, as collateral security for the "indebtedness to it mentioned in the answer to the sec- "ond interrogatory, seventy-seven shares of Natural Gas "Trust stock, of the value of $160 per share, and thirty- "three shares of the capital stock of the Eighth National "Bank of Philadelphia, of the par value of $264 per "share."

It was also error of the State court of Pennsylvania to enter judgment upon the answer of the bank (under the rulings of the Supreme Court of that State), even in a case where it had jurisdiction in the matter of the stock, for it is held by those courts that when stock is admittedly assigned to another as collateral security (as is done in this answer), by the person in whose name the stock stands (the judgment defendant), it is considered as not in the name of the defendant, but standing in the name of the garnishee who holds it as collateral security.

Early's Appeal, 89 Pa. St. 411;
Eby *vs.* Guest, 94 Pa. St., 160.

And it is provided by sections 32 and 33 of the Act of June 13th, 1836, P. L. 755 (P. and L. Digest, page 1937), as follows:

"In the case of stock, if it shall be held in another "name than that of the real owner thereof, the plaintiff "shall file in the office of the prothonotary of the court "an affidavit stating that he verily believes such stock to "be really the property of the defendant, and shall enter "into a recognizance with two sufficient sureties con- "ditioned for the payment of such damages as the court "may adjudge to the party to whom such stock shall "really belong, in case such stock should not be the "property of the defendant."

"Upon the filing of such affidavit and recognizance it "shall be lawful for the prothonotary to issue process in

"the nature of an attachment against such stock with a "clause of summons in the person in whose name the "same may be held in the nature of a writ of *scire facias* "against garnishees in a foreign attachment, and there- "upon the plaintiff may proceed to judgment execution "and sale of the stock in the manner allowed in cases of "foreign attachment."

No affidavit and no recognizance was filed in the office of the Prothonotary of the Court of Common Pleas No. 4, of Philadelphia County, and, therefore, under the laws of Pennsylvania the proceedings against the stock authorized by the finding of the court (Transcript, page 66), and the issue of the writ of *fi. fa.* for the sale of the stock (Transcript, page 69) were improper and invalid in any case.

11. There are other errors in the findings in this case, under the laws of Pennsylvania, provided the court had jurisdiction, but it is not deemed necessary to go further in this direction; our motive in pursuing the matter in detail as far as we have done being for the purpose of enlightening the court upon the circumstance that this bank, and plaintiff in error, have, in fact, been attached within the meaning of section 5242 aforesaid.

12. Subsequent to the issuing of this attachment writ, on October 5th, 1897, and to its service upon the bank, October 28th, 1897, and the filing of interrogatories in the attachment proceedings for the bank to answer, on November 6th, 1897, and the filing of the answers upon behalf of the bank to the interrogatories in the attachment proceedings, on November 24th, 1897, to wit, on December 23d, 1897, the bank failed, and, on January 29th, 1897, a Receiver was appointed by the Comptroller of the Currency of the United States, under section 5234 of the United States Revised Statutes; and under this last-named section, after giving bond and security as deemed proper by the Comptroller of the Currency,

"such Receiver, under the direction of the Comptroller, "shall take possession of the books, records, and assets

"of every description of such association; collect all "debts and claims belonging to it; and * * * such "Receiver shall pay over all moneys so made to the "Treasurer of the United States, subject to the order of "the Comptroller, and also make report to the Comp- "troller of all his acts and proceedings."

This Receiver, from the time of his appointment, under direction of the Comptroller, represents the bank, its stockholders, and its creditors.

Case *vs.* Terrell, 11 Wall., 199.

The Receiver of an insolvent National bank appointed by the Comptroller of the Currency is the agent of the United States, and not an agent or officer of any court; and, even though not a party to a suit against the bank in a State court, the Receiver of a National bank may appear in that court and contest the validity of the judgment.

Denton *vs.* Baker, 93 Fed. Rep., 46.

A suit against the Receiver of a National bank to compel him to pay out of the funds in his hands as Receiver moneys claimed by the complainant is a suit arising under the laws of the United States.

Hot Springs Independent School District *vs.* First National Bank of Hot Springs, 61 Fed. Rep., 417.

A Receiver may sue either in his own name or in the name of the bank.

National Bank *vs.* Kennedy, 17 Wall., 19;

Denton *vs.* Baker, 79 Fed. Rep., 192–194; 93 Fed. Rep., 46.

13. Long (the judgment defendant) had no claim whatsoever against the Chestnut Street National Bank. No claim was ever made by him against the Receiver. This is admitted by him in his answers to the interrogatories attached to the bill of discovery. (Transcript, page 62.) Therefore there was no claim by Long under section 5236, U. S. Revised Statutes, to be filed against the Receiver of the bank and proved to the

satisfaction of the Comptroller, or adjudicated in a court of competent jurisdiction. If Long had no claim against the assets in the hands of the plaintiff in error, it is evident that the judgment creditor of Long, who only stands in Long's shoes, has no claim against the plaintiff in error which can be either proved to the satisfaction of the Comptroller or adjudicated in a court of competent jurisdiction, and the findings of the State Court of Pennsylvania in favor of the defendant in error, as a judgment creditor of Long, are based simply upon its claim of jurisdiction of the writ of attachment and attachment proceedings against the bank. The attachment proceedings instituted by the defendant in error as judgment creditor of Long are in effect proceedings by Long to the use of the defendant in error (his judgment creditor) against the bank but are not proceedings of adjudication of a claim by Long against the bank. The attachment was not issued at the instance of Long. It was issued without his knowledge and against his will. Long had no claim against the bank, for he had been paid in full by his own admissions of record. It seems clear, then, that this proceeding was within the prohibition of section 5242 aforesaid.

14. Before judgment was entered against the bank and plaintiff in error, while these attachment proceedings were pending, the plaintiff in error had entered his appearance in this cause in the State Court of Pennsylvania, and had suggested of record his appointment as Receiver of the bank, and moved the court to vacate and dismiss the attachment proceedings for the reason that it had not jurisdiction of such proceedings under section 5242. (Transcript, pages 63–66). The State court overrules this motion, sustains its jurisdiction, and gives judgment in the attachment proceedings against the bank upon its answers filed to the interrogatories exhibited to it in the attachment proceedings by the defendant in error, then plaintiff in the State court. (Transcript, pages 66–69.) This, we think, is clearly error.

Respectfully submitted,

ASA W. WATERS,
Of Counsel.

In the Supreme Court of the United States.

[Record No. 17,306.]

George H. Earle, Jr., Receiver of the Chestnut Street National Bank, Plaintiff in Error,

vs.

The Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, Trustee for Mary Rodgers under the will of Benjamin Milnes, deceased.

October Term, 1899.

No. 218.

SUPPLEMENTAL BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

The point we desire to urge, in addition to that presented in the original brief, will appear in the supplemental brief filed in No. 219.

The case (No. 218) we are now considering, differs from case No. 219, in the fact that process was served upon the bank shortly before the appointment of the Receiver. The immediate effect of such appointment was to take out of the posession of the bank all its assets, leaving it nothing with which to respond to the judgment entered against it as garnishee in Court of Common Pleas, No. 4, of Philadelphia County, on the twenty-first day of May, 1898, after the appointment of the

Receiver, and after his motion to vacate and dismiss the attachment had been filed in connection with an affidavit setting forth the fact of the insolvency of the bank and of his appointment.

The judgment which the court entered was as follows (Record, page 66):—

> It is adjudged that the above-named garnishee has a deposit in money belonging to the above-named defendant of $2900, with interest from October 28th, 1897; and also that the said garnishee has seventy-seven shares of "National Gas Trust" stock and thirty-three shares of the capital stock of the Eighth National Bank of Philadelphia, belonging to the said defendant, and pledged by him with the said garnishee for payment by him to it of the sum of $17,831, with interest thereon from April 22d, 1897, and that the plaintiff have execution of any dividends on the said deposit of $2900, with interest, in common with the other creditors of said garnishee, less thirty-five dollars, counsel fee for the said garnishee's counsel; and that if the said garnishee refuse or neglect, on demand by the sheriff, to pay the same, then the same to be levied of the said garnishee according to law, as in the case of a judgment against it for its proper debt; and also that the plaintiff have leave to issue a writ of *fieri facias* against the above-named defendant for the sale of the said seventy-seven shares of "National Gas Trust" stock and thirty-three shares of the capital stock of the Eighth National Bank of Philadelphia, pledged by the defendant with the garnishee, subject to the garnishee's claim, under said pledge, of the sum of $17,831, with interest thereon from April 22d, 1897, or so much thereof as shall be necessary to satisfy the plaintiff's judgment against the defendant in this case, with costs.

It will be observed that process was awarded by the court which could only be executed against property which, by the laws of the United States, had passed into the possession of one of its officials. The attaching plaintiff received an award "of "any dividends on the said deposit of $2900, with interest, in "common with the other creditors of said garnishee." It was further adjudged in his favor that in case of failure, on demand, by the sheriff thus to pay, said sum should be "levied of the "said garnishee according to law," and that the plaintiff should issue a writ of *fieri facias* for the sale of the shares of Gas Trust stock and of Eighth National Bank of Philadelphia stock, "pledged by the defendant with the garnishee, subject "to the garnishee's claim under said pledge of the sum of "$17,831, with interest."

The dividends could neither be paid by the bank nor by the Receiver. They could only be paid out of moneys deposited in the Treasury of the United States, upon the order of the Comptroller of the Currency.

The shares of stock pledged with the insolvent bank had passed, before the judgment of the State Court, into the possession of the Receiver, subject to his duty to sell the same at such time and place as in his discretion should be best for realizing values. The process which the court directed to issue upon the judgment it entered against the garnishee, commanded the sheriff to sell these shares of stock. The inevitable result of such a sale would be an interference with the title of shares actually held by the Receiver. He would be confronted with a purchaser who would insist upon his right to receive the shares upon the payment of a sum specified in the decree of the Court of Common Pleas, No. 4, of Philadelphia County, in an action in which the Receiver had not been heard.

It was the right and the duty of the Receiver to sell these shares in accordance with his own discretion. If, after the sale, any balance still remained in his hands, it would be his duty to pay over the same to the Comptroller of the Currency. To the Comptroller alone, the person entitled to receive any remaining proceeds was bound to go for payment. It is impossible, upon the record before the court, to know whether or not the shares remained in the hands of the Receiver, at the date of judgment unsold. If they had been sold, the judgment ordered sale of a title which, under the laws of the United States, had been divested.

The shares of stock in question were in the hands of the Receiver, who was clothed with a right which could not be interfered with by the State court. The latter had no power, as against the Receiver, to determine the amount due upon the pledge, nor the conditions precedent, which would entitle the purchaser of the shares to take the same out of his possession.

The State court had no right to direct that a dividend upon a deposit of $2900 should be paid out of the funds of the

bank, and that the bank should be compelled to collect the amount due to it out of the shares of stock.

In short, by virtue of the judgment which was entered, the Receiver, whose sole duty was to convert the assets in his hands into cash, and to pay over the same into the Treasury of the United States, was interfered with in the discharge thereof.

The State court had made no decree as against the bank prior to the Receiver's appointment. There were no assets, in the form of money or otherwise, in the possession of the bank, payable to the judgment debtor, at the time of its making. They had passed from its possession into that of the Receiver, subject to the duty owing by him, under the statutes of the United States. The State court should have refused to make an order upon or garnishee the bank, holding it liable to pay over to an attaching creditor property which had been taken out of its possession by virtue of a statute of the United States. Its decree could have no effect other than to embarrass the Receiver in the discharge of his official duty. It was made concerning a *rem*, *inter alia*, shares of stock, which were in the possession of the officials of the United States.

JOHN G. JOHNSON,
Of Counsel for Plaintiff in Error.

Office Supreme Court U.S.
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Clerk.

No. 218

Brief of Wiler for Def't.

IN THE

Supreme Court of the United States

Filed April 10, 1900.

George H. Earle, Jr., receiver of the Chestnut Street National Bank, of Philadelphia, Penna.

Plaintiff in Error

vs.

The Commonwealth of Pennsylvania, at the suggestion and to the use of The Commonwealth Title Insurance and Trust Company, trustee for Mary Rodgers under the Will of Benjamin Mifflin, deceased

Defendant in Error

Error to the Supreme Court of the State of Pennsylvania

BRIEF OF DEFENDANT IN ERROR

ALFRED D. WILER
CRAWFORD, LAUGHLIN & DALLAS
Attorneys for Defendant in Error

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Argument for Defendant in Error.

The facts briefly are as follows:

Plaintiff recovered judgment against defendant on September 29, 1897, for $31,499, and on October 5, 1897, issued an attachment, *sur* judgment, summoning specifically M. Simpson McCullough as garnishee. The writ, however, read as follows: "And also, that by honest and lawful men of your bailiwick, you make known to the said defendant and to M. Simpson McCullough *and all other persons in whose hands or possession the said goods and chattels, stocks, moneys, interest and debts,* or any of them may be attached, as garnishees, that they be and appear before our said Court, at Philadelphia, on the first Monday of November next, to show if anything they, the said defendant or the said garnishees, have to say why the said judgment, besides cost of suit, should not be levied of the effects of the said defendant in the hands of the said garnishees. And have you then and there this writ."

Before the return day of the writ, and in pursuance thereof, the Chestnut Street National Bank was, on October 28, 1897, duly served and made an additional garnishee. November 6, 1897, interrogatories to said bank garnishee were filed with rule to answer. November 24, 1897, the bank filed its answer, in which it set up the following facts, viz.:

September 20, 1897, James Long closed his deposit account in said bank, and received a bank due-bill for $2900. On November 3, 1897, he surrendered to said bank the due-bill of September 20, 1897, for $2900, and said bank appropriated, at his request, $455.68 to payment of interest on his loan to said bank, for which they held certain collateral, and gave him a new due-bill for $2444.32, which due-bill of $2444.32 they afterwards paid to said Long.

It will be seen from this that when the attachment was served the bank, garnishee, owed Long $2900 on its due-bill of September 20, 1897, so that on November 3, 1897, when Long presented it for payment, it was bound by the attachment.

The answer further states:

That Long is indebted to the bank in $17,831, with interest from April 22, 1897, and that they have as collateral thirty-three shares of Eighth National Bank valued at $264 per share, and seventy-seven shares of Natural Gas Trust stock valued at $160 per share. On this the Court made the order complained of, which is, unquestionably, the proper form of order in such cases.

The only point is: Appellants say that subsequently to the attachment, to wit, on December 23, 1897, said bank suspended payment, and George H. Earle was, on January 29, 1898, duly appointed receiver, and said receiver, on May 2, 1898, moved to vacate the attachment, alleging that the Court of Common Pleas had no power to issue an attachment by which a depositor's and pledgor's account could be garnisheed, and cited in support thereof Section 5242 of the Revised Statutes of the United States. The Court, in an opinion filed, refused to vacate the attachment and entered the order complained of.

The opinion of the Court was as follows:

ARNOLD, *P. J.*: "Judgment was entered against the defendant, James Long, on September 29, 1897, for $31,499, and on October 5, 1897, an attachment *sur* judgment was issued and served on the Chestnut Street National Bank as garnishee.

To interrogatories the bank answered that Long was indebted to it in the sum of $17,831, with interest from April 22, 1897; that on September 20, 1897, it issued a due-bill for $2900, payable only through the Clearing House the day after issue, and delivered the same to Long, he having closed his account with the bank. The due-bill was not paid through

the Clearing House, but on November 3, 1897, which was nearly a month after the service of the attachment, Long surrendered the due-bill to the bank to pay interest due on his indebtedness above mentioned, which interest was deducted, and the bank issued a new certificate, dated November 3, 1897, for $2444.33, and delivered it to Long. This due-bill was passed through the Clearing House and paid. The bank answered further that when the writ of attachment was served it held as collateral security for the indebtedness to it seventy-seven shares of stock of the National Gas Trust of the value of $160 per share, and thirty-three shares of the capital stock of the Eighth National Bank of the value of $264 per share.

The Chestnut Street National Bank failed on December 23, 1897, and is now in the hands of a receiver, who has entered a rule to vacate and dismiss the attachment against that bank for want of jurisdiction in this Court. In support of the rule the receiver relies upon section 5242 of the Revised Statutes of the United States, which is as follows:

'All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, securities on real estate, or of judgments or decrees in its favor; all deposits of money or bullion or other valuable thing for its use or for the use of any of its shareholders or creditors; and all payments of money to either made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void. No attachment, injunction, or execution shall be issued against such association or its property before final judgment in any suit, action, or proceeding in any State, county, or municipal court.'

Were this attachment issued against the bank for a debt due by it, then the claim of the receiver to exemption from

such attachment would be valid. But it is not for an indebtedness of the bank that an attachment was served on it. The attachment is for an indebtedness by Long, and the purpose of the attachment is not to obtain a judgment for a debt, but to inquire and determine whether it has any money or property of Long which is subject to an execution at the suit of his creditors. The purpose of the statute is to prevent one creditor of an insolvent national bank from obtaining a priority over others, and to preserve an equality between its creditors in the distribution of its assets. Therefore it is enacted that no attachment, injunction or execution shall issue against such association or its property before judgment, such, for instance, as a foreign attachment for a debt due by it. The statute does not prevent suits against a national bank in a State court. All it means is that no liens shall be acquired before judgment by attachment, injunction or execution before judgment. After judgment an execution may be issued against a national bank the same as against any other defendant. But this is not a suit against the bank. It is a suit now in judgment against Long, and the attachment is an execution against him, with a clause of *scire facias* to warn the bank to show cause why judgment should not be levied on Long's property in the possession of the bank. The bank admits that when the attachment was served it owed Long $2900 on a Clearing House due-bill which was not paid in the usual course of such due-bills; that Long presented the bill to the bank on November 3, 1897, and the bank paid it by giving Long credit for interest due by him and giving him a new bill. This was a month after the attachment had been served upon the bank. The bank had no right to deal with Long as it did. The plaintiff was entitled to that money and to a finding to that effect. Likewise the plaintiff is entitled to a finding that the bank holds the above-mentioned shares of stock subject to its lien for the indebtedness of Long to it, and the plaintiff is entitled to execution against that stock, subject to the lien of the bank. As to the money, we incline to think that as the

bank is now insolvent the plaintiff can recover no more than a dividend, and is not entitled to any priority over the other creditors of the bank. As to the stock, the plaintiff is entitled to a *fi. fa.* to sell that subject to a claim of the bank.

The foregoing reasoning has the support of a decision of the Court of Appeals of New York, which held that section 5242 of the Revised Statutes of the United States does not prohibit the issue of an attachment, injunction or execution against an insolvent national bank for property of a third person in the custody of the bank. *Corn Exhange Bank* vs. *Blye*, 101 N. Y., 303.

Rule discharged."

The Court then entered the following order.

"And now, to wit, May 21, 1898, upon the hearing of the attachment in the above case, and the interrogatories of the plaintiff, and the answer of the garnishee thereto, it is adjudged that the above-named garnishee has a deposit in money belonging to the above-named defendant of $2900, with interest from October 28, 1897; and also that the said garnishee has seventy-seven shares of "National Gas Trust Stock" and thirty-three shares of the capital stock of the Eighth National Bank of Philadelphia belonging to the said defendant, and pledged by him with the said garnishee for payment by him to it of the sum of $17,831, with interest thereon from April 22, 1897; and that the plaintiff have execution of any dividends on the said deposit of $2900, with interest in common with the other creditors of said garnishee, less thirty-five dollars counsel fee for the said garnishee's counsel; and that if the said garnishee refuse or neglect, on demand by the Sheriff, to pay the same, then the same to be levied of the said garnishee according to law, as in the case of a judgment against it for its proper debt; and also that the plaintiff have leave to issue a writ of *fieri facias* against the above-named defendant for the sale of the said seventy-seven shares of 'National Gas Trust Stock' and the thirty-three shares of the capital stock of the 'Eighth National Bank'

of Philadelphia, pledged with the defendant by the garnishee, subject to the garnishee's claim under said pledge of the sum of $17,831, with interest thereon from April 22, 1897, or so much thereof as shall be necessary to satisfy the plaintiff's judgment against the defendant in this case, with costs.

By the Court.

M. ARNOLD,
P. J."

The case, so far as the deposit account is concerned, is easily disposed of, for the bank continued to do business long after the attachment was served, and, in point of fact, it admits that on November 3, 1897 (five days after the service of the attachment), it actually paid the defendant, Long, the money bound by this attachment, and, so far as the stock is concerned, the decree in nowise affects the bank or the receiver, as nothing is sold but Long's equity.

Independently of this, however, the Act of Congress referred to has no bearing in cases of attachments, where the object is merely to garnishee a depositor's or pledgor's account, as the attaching creditor only steps in the shoes of the defendant in the attachment. What the act is intended for is to prevent creditors of an insolvent bank from issuing attachments on debts owing by the bank, *qua* bank, and thereby obtain a preference over other creditors. This is the result of all the decisions cited by the appellant, as a glance at the facts of them will show.

The case of *Pacific National Bank* vs. *Mixter*, 124 U. S., 721, was as follows:

"November 21, 1881, Pacific National Bank of Boston was embarrased and placed in charge of a bank examiner, and remained closed until March 18, 1882, when its doors were opened. At the time the bank resumed business it was indebted to Mixter in $15,000. On March 24, 1881, Mixter began suit against the bank in the Circuit Court of the United States for the District of Massachusetts, by attachment and a deposit of the bank's in Maverick National Bank and Howard National Bank, garnisheed.

After the attachment had been levied the bank arranged with Lewis Colman and J. Shepherd to give security to dissolve the attachment, and the attachment was dissolved. The sureties were indemnified by the bank placing in their hands a certificate of deposit on the Maverick National Bank for $100,000. The bank on May 22, 1882, closed its doors a second time and a receiver was appointed.

The receiver made a motion to dismiss the suit, which was overruled and judgment entered against the bank.

The receiver then filed a bill in equity in said Circuit Court against the attaching creditor and the sureties on the bonds to restrain proceedings on the attachment.

The bill was dismissed and appeal taken.

The Court held the attachment not good, *but allowed the judgment to stand so as to claim a dividend*, and reversed the decree dismissing the bill, and held that the assets held by the sureties for their indemnity should be turned over to the receiver.

In *Bank* vs. *Colby*, 21 Wallace, 609, facts were:

Colby on April 17, 1867, issued an attachment out of the Circuit Court of Dallas County against the First National Bank of Selma, and same day levied on lands of the bank. The bank ceased to do business on April 16, 1867, having that day failed to pay a draft of the United States for $75,000; and on April 17, 1867, the president of the bank absconded, and that day General Swayne, commanding the Federal forces, by direction of the Secretary of the Treasury, took possession of the bank and its possessions. On June 3, 1867, Cornelius Cadle was duly appointed receiver.

Cadle moved to dissolve the attachment, which the Court refused; this ruling was confirmed by the Supreme Court of Alabama. This Court reversed said ruling, Mr. Justice Field in his opinion saying:

"As to the general creditors, the Act evidently intends to secure equality among them in the division of the proceeds

of the property of the bank. The fiftieth section provides for the appointment of a receiver of an insolvent bank who shall take possession of its assets, * * * make a ratable dividend of the money on all claims *proved* to his *satisfaction* or *adjudicated* in a court of competent jurisdiction."

The fifty-second section, further to secure this equality, declares "all transfers * * * with a view to the preference of one creditor over another * * * shall be utterly null and void."

"There is in these provisions a clear manifestation * * * to secure the assets of the bank for ratable distribution among its general creditors. This design would be defeated if preference in the application of the assets could be obtained by adversary proceedings. The priority of the United States and the ratable distribution among the general creditors so studiously provided for by the Act would be lost, as justly observed by counsel, if preference was left to the race of diligence, creditors living remote from the location of the bank would always be distanced in the contest and the equality promised to them by the Act would be a mere mockery."

Cadle, Receiver, vs. *Tracy*, 11 Blackford, 101.

The facts as they appear on plaintiff in error's brief show that it was similar to *Bank* vs. *Colby*, viz.: a suit by a *creditor of the bank*, who attached moneys of the Alabama Bank in possession of a national bank in New York.

In Garner vs. *Second National Bank of Providence*, 66 Fed. Rep., 369.

The plaintiff, a resident of New York, brought her action in a State Court against defendant national bank and two individuals, all residents of Rhode Island. A warrant of attachment was taken out, and certain moneys of the defendant bank were attached in hands of Fourth National Bank of New York.

A motion was made to remove the cause to the Circuit

Court of United States, which was allowed and the attachment dissolved.

Southwick vs. *First National Bank of Memphis*, 7 Hun., 96.

"The defendant is a national bank located at Memphis, Tenn. At the beginning of the action the plaintiff obtained an attachment against the defendant, and levied same upon moneys in the Park Bank, in the City of New York, belonging to defendant.

The defendant moved to vacate the attachment on the ground that it was issued in violation of Section 57 of the National Banking Act of 1864, as amended by Section 2 of Chapter 269 of the laws of Congress of 1873. As so amended, that section reads as follows: "* * * *And provided further*, that no attachment, injunction or execution shall be issued against such association or its property before final judgment in any such suit, action or proceedings in any State, county or municipal Court. The Court below held that the case of *Cook* vs. *State National Bank of Boston* (52 N. Y., 96) necessarily involves the question presented in this motion, and accordingly refused to vacate the attachment." * * * "It follows from these views and from the law as laid down in *Cook* vs. *State National Bank of Boston* (*ubi. sup.*) that the attachment in this case was properly issued."

In *Rhoner* vs. *First National Bank of Allentown*, 14 Hun., 126, was practically the same question as *Garner* vs. *Second National Bank* (*supra*). Here Rhoner, who was a creditor of the First National Bank of Allentown, issued in New York an attachment against it, which was dissolved.

In *Central National Bank* vs. *Richmond National Bank*, 52 How., 136.

Both plaintiff and defendant were national banks.

The plaintiff, in violation of Sec. 5242, on August 29, 1876, sued out a warrant of attachment against the de-

fendant, a national bank located at Mansfield, Ohio, and attached the defendant bank's balance in the Fourth National Bank of New York by serving the usual notice.

A motion to vacate the attachment was allowed.

Robinson vs. *National Bank of New Berne*, 81 N. Y., 385 (reported below, 19 Hun., 477). In the Court below Smith, J., says: "The defendant is a banking corporation created under the national banking law of Congress and located and doing business at New Berne, in the State of North Carolina. Upon an affidavit showing these facts and showing that the defendant was indebted to the plaintiff on contract and had personal property within this State a warrant of attachment issued by a justice of this Court against the defendant *before final* judgment. The *appellant contends that the attachment* is *void* for *want of jurisdiction in this Court to issue it.* The claim is based upon the last clause of Section 5242 of the United States Revised Statutes. * * *

"For the plaintiff it is contended that the prohibition * * * applies only to such national banks * * * as have committed or are contemplating an act of insolvency. We are inclined to think that construction correct, and that the purpose of the clause is to prevent *creditors* of *insolvent national banks from obtaining preferences before final judgment.* The language certainly admits of that construction, and we should be unwilling to infer from doubtful and ambiguous language an intention on the part of Congress to divest the State Courts of a pre-existing jurisdiction, even as to a provisional remedy merely."

Our conclusion is, that the order refusing to vacate the attachment should be affirmed. This ruling was affirmed by the Court of Appeals in an elaborate opinion by Danforth, J., 81 N. Y., 385.

National Shoe and Leather Bank of N. Y., et al., vs. *Mechanics' Natl. Bank of Newark, et al.*, 89 N. Y., 440: The facts appear in a very meagre manner, but so far as shown they were attachments by three national banks

against the Mechanics' National Bank of Newark, N. J., an insolvent bank. Mr. Frelinghuysen, the receiver, moved to vacate the attachments, which the Court below did (27 Hun., 53), and on appeal this was affirmed.

Rayner vs. *Bank*, 93 N. Y., 371.

Facts appear in 49 N. Y. Supr. Ct., 119.

Raynor brought suit against Pacific National Bank of Boston on January 9, 1882, on a certificate of deposit for $5000 issued by the defendant by an attachment, and levied on a balance to the credit of defendant bank in the National Park Bank of New York. At time the warrant was issued defendant bank had closed its doors, and was in charge of a bank examiner. May 22, 1882, L. M. Price was appointed receiver. The lower Court vacated the attachment This was affirmed by the Superior Court.

The ruling was affirmed by the Court of Appeals, 93 N. Y. Supr. Ct., RAPALLO, *J.*, saying: "The attachment issued on the 9th of January, 1882. If at the time defendant was insolvent or in contemplation of insolvency the attachment was prohibited by Section 5242. We think the evidence submitted to the Court below was ample to sustain its conclusion that the bank had committed an act of insolvency when the attachment was issued.

"The affidavit on which the attachment was granted stated that the bank was in an embarrassed condition and was about to or had failed.

"At the time of issuing the attachment, January 9, 1882, the property and affairs of the bank were actually in charge of Daniel Medham, a national bank examiner.

"It must be observed that the application to set aside the attachment is not made by the bank for the benefit of its stockholders, but is made for the benefit of the remaining creditors. It cannot be supposed that Congress intended to throw the door open whereby diligent creditors might obtain preference by means of attachment while retaining all the other provisions of Section 5242, designed to guard against such preferences."

Corn Exchange Bank vs. *Blye, Receiver*, 101 N. Y., 303. In this case plaintiff brought suit to recover possession of certain securities, which complainant alleges were pledged to it as security for a draft, which draft was forwarded for collection to said Middletown National Bank, accompanied by the securities, with instructions to hold them until payment of the draft. The draft was not paid, that the bank suspended, defendant was appointed receiver, the securities were delivered to him and he refused to deliver same.

FINCH, *J.*, says: "The sole question is whether Section 5242 of the United States Revised Statutes prohibits the requisition issued to the Sheriff and protects the receiver in his possession. The Bank of Middletown became insolvent and the defendant was appointed its receiver under the Federal law. That appointment vested in him all the assets of the bank to be converted into money and distributed among the creditors. The object sought to be accomplished is the distribution of these assets fairly and without preference, and that has been held to be the aim and purpose of the section in question. (*Robinson* vs. *Bank of Newbern*, 82 N. Y., 385; *Rosenblatt* vs. *Johnson*, 104 U. S. 462.) * * * The receiver by his appointment acquires no right to property in the custody of the bank, which the latter does not own, as against the real owners, and the section in question was plainly not intended to protect the receiver's custody, as against such owner."

The theory of plaintiff in error that because the action was replevin alters the matter is not sound in view of the above language of the Court.

Chesapeake Bank vs. *First National Bank of Baltimore*, 40 Md., 269, MILLER, *J.* "The appellant, on the 18th of September, 1873, caused an attachment *on warrant* to be issued out of the Superior Court of Baltimore City to affect the property and credits of the First National Bank of the City of Washington, as a non-resident debtor, which was laid in the hands of the First National Bank of Balti-

more as garnishee." In October following garnishee moved to quash, which was done, which was affirmed.

First National Bank of Kasson vs. *La Due*, 39 Minn., 415.

In this case La Due, a resident of Minnesota, issued an attachment in New York, and attached moneys of the First National Bank of Kasson in the hands of its New York correspondent. The First National Bank of Kasson then filed a bill in Minnesota against La Due to restrain him from proceeding with his suit in New York. The Court refused the injunction.

Safford vs. *First National Bank of Plattsburg*, 61 Vt. 373:

Was a suit by Safford, a resident of Washington, D. C., against C. W. Witters, *a trustee* of *defendant's bank*. The suit was on an account against the bank. Court say: "The service of a trustee writ upon the trustee and thus preventing the defendant from receiving whatever may be in the hands of the trustee is in legal effect attaching his property, and treating the service as here made as an attachment of the defendant's property, the attachment as we have seen was illegal and void."

Planters' Bank vs. *Berry*, 91 Ga. 264.

"The facts of the case appear to be as taken from the above report, and also 89 Ga., 333. Berry, a creditor of the National Park Bank of New York, issued an attachment, and attached the funds of said bank on deposit with the Planters' Loan and Savings Bank."

In *Freeman Manufacturing Co.* vs. *National Bank of Boston et al.*, 160 Mass., 398:

"These cases come before us on motions of the defendant bank, made under St. 1883, c. 223, § 6, to annul orders of a single Justice of this Court, suspending after appeal decrees of the Superior Court. These decrees dissolved preliminary injunctions which had been issued in the suits, and the injunctions now have been reinstated.

"They prohibit the bank from disposing of certain notes pledged to it, but it is alleged without right and with notice.

"The only question before us is whether a State Court has power to issue such injunctions before final judgment."

A review of all these cases show, as before stated, that not one of them substantiate the plaintiff in error's contention—they are shown to be cases where a *creditor of an insolvent bank* sought to obtain a preference by attachment of the bank's property; whereas the case at bar is an attachment of *Long's* property in the custody of the bank. It would be writing something in the statute that is not there to say that the Act of Congress exempts a depositor's or pledgor's account from attachment. One only has to read the Act to see that the exemption from attachment refers to the property of the bank. It says "no attachment, injunction or execution shall be issued against such association or *its* property before final judgment," etc.

The plaintiff in error would write into the statute after the words "*its property*" the words "or the property of any of its creditors." Of course, Congress did not intend any such thing.

So much of the plaintiff in error's brief as relates to the attachment laws of Pennsylvania we do not think require discussion. And the same thing applies to so much as relates to Long's answers to the bill of discovery, that has nothing to do with this case. The only part of this record that is judicially before this Court is the attachment proceedings against the Chestnut Street National Bank on its answers filed to the interrogatories.

ALFRED D. WILER,
CRAWFORD, LAUGHLIN & DALLAS,
Attorneys for Defendant in Error.

The state court had no authority to order execution in favor of the plaintiff of any dividends upon the money on deposit in the bank to Long's credit at the time the bank was served with the attachment, and direct the sale of the shares of stock originally held by the bank as collateral security.

THE case is stated in the opinion.

Mr. John G. Johnson and *Mr. Asa W. Waters* for plaintiff in error. *Mr. W. H. Addicks* was on *Mr. Waters'* brief.

Mr. James C. Stillwell for defendant in error in No. 219, which was argued with this case.

MR. JUSTICE HARLAN delivered the opinion of the court.

On the 29th day of September, 1897, the Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title, Insurance and Trust Company, trustee for Mary Rodgers, obtained judgment upon a bond in the Court of Common Pleas for the county of Philadelphia against one James Long for the sum of $31,499. A writ of attachment issued upon that judgment, and on the 5th day of October, 1897, an alias writ was issued against the Chestnut Street National Bank of Philadelphia, as garnishee. The writ was served on October 28, 1897, and commanded the bank to show cause in that court on a day named why the judgment against Long, with costs of writ, should not be levied on the effects of the defendant in the hands of the bank. Afterwards, on November 6, 1897, special interrogatories were filed by the plaintiff, and a rule was entered requiring the bank, as garnishee, to answer the same within a named time. Subsequently the bank filed its answer in the attachment proceedings, and November 24, 1897, it filed an answer to the special interrogatories; and, on December 15, 1897, a rule was entered by plaintiff for judgment against the bank, as garnishee, on its answers.

A few days later, on the 23d day of December, 1897, the bank suspended payment of its obligations, and by order of the Comptroller of the Currency of the United States closed its

doors to business; and January 29, 1898, the present plaintiff in error, Earle, was appointed by that officer as receiver of the bank and duly qualified as such.

Subsequently, May 5, 1898, Earle, as receiver, entered his appearance in the above action and filed a suggestion of record setting forth his appointment and qualification, and on the following day filed an affidavit stating his appointment as receiver. On the succeeding day a motion was made and filed (entered as a rule) by the receiver to vacate and dismiss the attachment served upon the bank, garnishee, for want of jurisdiction in the Court of Common Pleas under section 5242 of the Revised Statutes of the United States, the receiver insisting that all the proceedings in attachment against the bank were null and void.

The rule entered December 15, 1897, for judgment against the bank and the rule to vacate and dismiss the attachment for want of jurisdiction in the Court of Common Pleas were heard, and that court, on May 21, 1898, made absolute the rule for judgment and entered the following: "And now, to wit, May 21, 1898, upon the hearing of the attachment in the above case and the interrogatories of the plaintiff and the answer of the garnishee thereto, it is adjudged that the above-named garnishee has a deposit in money belonging to the above-named defendant of $2900, with interest from October 28, 1897; and also that the said garnishee has 77 shares of 'National Gas Trust stock' and 33 shares of the capital stock of the Eighth National Bank of Philadelphia belonging to the said defendant and pledged by him with the said garnishee for payment by him to it of the sum of $17,831, with interest thereon from April 22, 1897, and that the plaintiff have execution of any dividends on the said deposit of $2900, with interest, in common with the other creditors of said garnishee, less $35 counsel fee for the said garnishee's counsel, and that if the said garnishee refuse or neglect, on demand by the sheriff, to pay the same, then the same to be levied of the said garnishee according to law, as in the case of a judgment against it for its proper debt, and also that the plaintiff have leave to issue a writ of *fieri facias* against the above-named defendant for the sale of the said 77 shares of 'National Gas Trust stock' and 33 shares of the capi-

tal stock of the Eighth National Bank of Philadelphia, pledged by the defendant with the garnishee, subject to the garnishee's claim under said pledge of the sum of $17,831, with interest thereon from April 22, 1897, or so much thereof as shall be necessary to satisfy the plaintiff's judgment against the defendant in this case, with costs."

The rule to vacate and dismiss the proceedings in attachment for want of jurisdiction in the Court of Common Pleas was discharged.

The cause was carried to the Supreme Court of Pennsylvania, where the judgment of the Court of Common Pleas was affirmed.

By the Revised Statutes of the United States it is provided:

"§ 5234. On becoming satisfied, as specified in sections 5226 and 5227, that any [national banking] association has refused to pay its circulating notes as therein mentioned, and is in default, the Comptroller of the Currency may forthwith appoint a receiver and require of him such bond and security as he deems proper. Such receiver, under the direction of the Comptroller, shall take possession of the books, records and assets of every description of such association, collect all debts, dues and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct, and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders. Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the Comptroller, and also make report to the Comptroller of all his acts and proceedings.

"§ 5235. The Comptroller shall, upon appointing a receiver, cause notice to be given, by advertisement in such newspapers as he may direct, for three consecutive months, calling on all persons who may have claims against such association to present the same and make legal proof thereof.

"§ 5236. From time to time, after full provision has been first made for refunding to the United States any deficiency in

redeeming the notes of such association, the Comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held."

"§ 5242. All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction or execution shall be issued against such association or its property before final judgment in any suit, action or proceeding in any state, county or municipal court."

Sections 5234, 5235 and 5236 above quoted have reference to the affairs and property of national banks in the hands of receivers and the administration of its assets by the Comptroller; and the words in section 5242, "no attachment, injunction or execution shall be issued against such association or its property before final judgment in any suit, action or proceeding in any state, county or municipal court," are to be construed in connection with the previous parts of the same section declaring null and void certain transfers, assignments, deposits and payments made after the commission by the bank "of an act of insolvency, or in contemplation thereof," with the intent to prevent the application of the bank's assets in the manner prescribed by Congress, or with a view to the preference by the

bank of one creditor to another. Whatever may be the scope of section 5242, an attachment sued out against the bank *as garnishee* is not an attachment against the bank or its property, nor a suit against it, within the meaning of that section. It is an attachment to reach the property or interests held by the bank for others. After the Chestnut Street National Bank had been served as garnishee with the attachment sued out in the Long suit but before it went into the hands of a receiver, it admitted in its answers to special interrogations in the suit against Long that it was indebted to Long on a clearing-house due bill, and also that it held as collateral security for his debt to it certain shares of the stock of the National Gas Trust, as well as certain shares of the stock of the Eighth National Bank of Philadelphia. By the service of the attachment upon the bank, the plaintiff in the attachment acquired a right to have the money and property belonging to Long in the hands of the bank applied in satisfaction of its judgment against him, subject of course to the bank's lien for any debt due to it at that time from him. The bank therefore became bound to account to the plaintiff in the attachment for whatever property or money it held for the benefit or to the use of Long at the time the attachment was served upon it. And the right thus acquired by the service of the attachment was not lost by the suspension of the bank and the appointment of the receiver. The assets of the bank passed to the receiver burdened, as to the interest that Long had in them, with a lien in favor of the plaintiff in the attachment which could not be disregarded or displaced by the Comptroller of the Currency.

We must not, however, be understood as holding that the distribution of the bank's assets in the hands of the receiver could have been in anywise directly controlled by the state court or seized under an attachment or execution in the hands of any state officer. On the contrary, the direction in the statute that the receiver pay over all moneys realized by him from the assets of the bank to the Treasurer of the United States, subject to the order of the Comptroller, furnished a rule of conduct for him which neither an order of nor any proceedings in the state court could affect, modify or change. The

scheme of the statute relating to suspended national banks is that from the time of a bank's suspension all its assets, of whatever kind, as they are at the time of suspension, pass in the first instance, to the receiver, the proceeds thereof to be distributed by the Comptroller among those whose claims are proved to his satisfaction or are adjudicated by some court of competent jurisdiction. So when the Chestnut Street National Bank suspended and went into the hands of a receiver the entire control and administration of its assets were committed to the receiver and the Comptroller, subject, however, to any rights of priority previously acquired by the plaintiff through the proceedings in the suit against Long.

It results that the state court did not err in overruling the motion of the receiver to vacate and dismiss the attachment issued in the suit brought against Long and served upon the bank as garnishee prior to its suspension. The proceedings in the state court prior to the appointment of a receiver were all in due course of law. We do not understand that to be controverted. But we are of opinion that the order of judgment of May 21, 1898, was erroneous in some particulars. As the bank did not cease to exist as a corporation upon its suspension and the appointment of a receiver, it was competent for the state court to determine, as between the plaintiff in the attachment and the bank, what rights were acquired by the former as against the latter by the service of the attachment; and its judgment, thus restricted, could have been brought to the attention of the Comptroller for his guidance in distributing the assets of the bank. To this extent the judgment below is affirmed. But, for the reasons already stated, we hold that the state court had no authority to order execution in favor of the plaintiff of any dividends upon the money on deposit in the bank to Long's credit at the time the bank was served with the attachment, and direct the sale of the shares of stock originally held by the bank as collateral security, but which passed upon the suspension of the bank to the custody of the receiver. This part of the judgment should be set aside. It is proper to say that the rights acquired by the defendant in error under the garnishee proceedings can be made effective upon application

EARLE *v.* PENNSYLVANIA.

ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

No. 218. Argued April 11, 1900. — Decided May 14, 1900.

An attachment sued out against a bank as garnishee is not an attachment against the bank or its property, nor a suit against it within the meaning of section 5242 of the Revised Statutes.

When the Chestnut Street National Bank suspended and went into the hands of a receiver, the entire control and administration of its assets were committed to the receiver and the comptroller, subject, however, to any rights of priority previously acquired by the plaintiff through the proceedings in the suit against Long.

to the Comptroller, to whom Congress has entrusted the power to distribute the assets of a suspended bank among those entitled thereto.

The decree is reversed to the extent indicated, and the cause is remanded for further proceedings not inconsistent with this opinion.

Reversed.